No. 14-1055

Title:	Crystal Monique Lightfoot, et al., Petitioners v. Cendant Mortgage Corporation, dba PHH Mortgage, et al.
Docketed:	March 3, 2015
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Nos.:	(10-56068)
Decision Date:	October 2, 2014
Rehearing Denied:	November 20, 2014

Questions Presented

---Date---	------Proceedings and Orders----------
Feb 17 2015	Petition for a writ of certiorari filed. (Response due April 2, 2015)
Feb 17 2015	Appendix of Crystal Monique Lightfoot, et al. filed.
Mar 30 2015	Waiver of right of respondents Fannie Mae to respond filed.
Apr 15 2015	DISTRIBUTED for Conference of May 1, 2015.
Apr 22 2015	Response Requested. (Due May 22, 2015)
Apr 30 2015	Order extending time to file response to petition to and including June 22, 2015.
May 22 2015	Brief amicus curiae of The American Association for Justice filed.
Jun 22 2015	Brief of respondent Fannie Mae in opposition filed.
Jul 8 2015	DISTRIBUTED for Conference of September 28, 2015.
Jul 8 2015	Reply of petitioners Crystal Monique Lightfoot, et al. filed. (Distributed)
Oct 5 2015	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
May 23 2016	Brief amicus curiae of United States filed.
Jun 7 2016	DISTRIBUTED for Conference of June 23, 2016.
Jun 7 2016	Supplemental brief of respondent Fannie Mae filed. (Distributed)
Jun 27 2016	DISTRIBUTED for Conference of June 27, 2016.
Jun 28 2016	Petition GRANTED.
Aug 5 2016	The time to file the joint appendix and petitioners' brief on the merits is extended to and including August 16, 2016.
Aug 5 2016	The time to file respondents' brief on the merits is extended to and including September 19, 2016.
Aug 16 2016	Joint appendix filed. (Statement of costs filed.)
Aug 16 2016	Brief of petitioners Crystal Monique Lightfoot, et al. filed.
Aug 23 2016	Brief amicus curiae of United States filed.
Aug 23 2016	Brief amicus curiae of The American Red Cross in support of neither party filed.
Aug 23 2016	Brief amicus curiae of The American Association for Justice filed.
Sep 2 2016	SET FOR ARGUMENT On Tuesday, November 8, 2016
Sep 9 2016	Record has been requested from the U.S.C.A. 9th Circuit.
Sep 19 2016	Brief of respondent Fannie Mae filed.

Sep 21 2016	Record received from the U.S.C.A. 9th Circuit is electronic and located on PACER. Also received are documents from the district court that was filed in hardcopy only. This document has been transferred electronically, the remaining district court documents are available on PACER.
Sep 22 2016	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Sep 28 2016	CIRCULATED
Oct 17 2016	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Oct 19 2016	Reply of petitioners Crystal Monique Lightfoot, et al. filed. (Distributed)
Nov 8 2016	Argued. For petitioner: E. Joshua Rosenkranz, New York, N. Y.; and Ann O'Connell, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondents: Brian P. Brooks, Washington, D. C.
Jan 18 2017	Judgment REVERSED. Sotomayor, J., delivered the opinion for a unanimous Court
Feb 21 2017	JUDGMENT ISSUED.

~~Name~~~~~~~~~~~~~~~~~~~~~~	~~~~~~~Address~~~~~~~~~~~~~~~~~~~	~~Phone~~~
Attorneys for Petitioners:		
E. Joshua Rosenkranz Counsel of Record	Orrick, Herrington & Sutcliffe LLP 51 West 52nd Street New York, NY 10019-6142 jrosenkranz@orrick.com	(212) 506-5000
Party name: Crystal Monique Lightfoot, et al.		
Andrew Henry Friedman	8522 National Blvd. Suite 107 Culver City, CA 90232 afriedman@helmerfriedman.com	(310) 396-7714
Party name: Crystal Monique Lightfoot, et al.		
Attorneys for Respondents:		
Jonathan D. Hacker Counsel of Record	O'Melveny & Myers LLP 1625 Eye Street, N.W. Washington, DC 20006 jhacker@omm.com	(202) 383-5300
Party name: Fannie Mae		
Brian P. Brooks	O'Melveny & Myers LLP 1625 Eye Street, NW Washington, DC 20006	(202) 383-5300
Party name: Cendant Mortgage Corporation, dba PHH Mortgage, et al.		
Other:		
Ian Heath Gershengorn	Acting Solicitor General United States Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001	(202) 514-2217

SupremeCtBriefs@USDOJ.gov

Party name: United States

Brian David Netter

Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
bnetter@mayerbrown.com

(202) 263-3000

Party name: The American Red Cross

Ann O'Connell

Assistant to the Solicitor General
Office of the Solicitor General
Department of Justice
Washington, DC 20530
aoconnell123@gmail.com

(202) 514-3385

Party name: United States

Jeffrey R. White

American Association for Justice
777 6th Street, N.W., Suite 200
Washington, DC 20001
jeffrey.white@justice.org

(202) 944-2839

Party name: The American Association for Justice

No. 14-1055

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP. D/B/A PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS AND ATTORNEYS EQUITY NATIONAL CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ANDREW H. FRIEDMAN
Counsel of Record
GREGORY D. HELMER
ANDREA K. LOVELESS
HELMER FRIEDMAN, LLP
8522 National Boulevard, Suite 107
Culver City, California 90232
(310) 396-7714
afriedman@helmerfriedman.com

Attorneys for Petitioners

257973

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

The congressional charter of the Federal National Mortgage Association ("Fannie Mae") grants it the power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a).

The questions presented are:

(1) whether the phrase "to sue and be sued, and to complain and to defend, **in any court of competent jurisdiction**, State or Federal" in Fannie Mae's charter confers original jurisdiction over every case brought by or against Fannie Mae to the federal courts; and

(2) whether the majority's decision in *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247 (1992) (5-4 decision), should be reversed.

PARTIES TO THE PROCEEDING

Petitioners, who were Plaintiffs-Appellants below, are Crystal Lightfoot and Beverly Hollis-Arrington.

Respondents, who were Defendant-Appellees below, are Cendant Mortgage Corporation, doing business as PHH Mortgage; Fannie Mae; Robert O. Matthews; and Attorneys Equity National Corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Crystal Lightfoot and Beverly Hollis-Arrington submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Court of Appeals for the Ninth Circuit affirmed the district court's denial of Petitioners' motion to remand to state court and dismissal of Petitioners' claims in an opinion reported at *Lightfoot v. Cendant Mortgage Corp.*, 769 F.3d 681 (9th Cir. 2014). The United States District Court decision denying Petitioners' motion to remand to state court is unreported. (Pet'r App. D at 43a-44a.)

JURISDICTION

The Court of Appeals for the Ninth Circuit entered judgment on October 2, 2014. (Pet'r App. B at 3a-40a.) That day Petitioners filed a timely petition for rehearing *en banc*. The Court of Appeals for the Ninth Circuit denied Petitioners' petition for rehearing *en banc* on November 20, 2014. (Pet'r App. 1a-2a) This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The appendix reproduces selected provisions from Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. § 1716 *et seq.* Specifically, the appendix contains 12 U.S.C. § 1717(a) and 12 U.S.C. § 1723a(a) in their entirety. (Pet'r App. F, G.) The portion of 12 U.S.C. § 1717(a) that is most relevant to this matter is as follows:

> On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and corporate succession as a separated portion of the previously existing body corporate, as follows:
>
> One of such separated portions shall be a body corporate without capital stock to be known as Government National Mortgage Association (hereinafter referred to as the "Association"), which shall be in the Department of Housing and Urban Development...
>
> The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation")...The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation.

12 U.S.C. § 1717(a)(2)(A)-(B).

The portion of 12 U.S.C. § 1723a(a) that is most relevant to this matter is as follows:

> Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to...sue

> and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property...

12 U.S.C. § 1723a(a).

STATEMENT OF THE CASE

In 2002, Appellants filed suit against Appellees in California state court. There is no dispute that Appellants' underlying claims are all state law claims stemming from a real property foreclosure matter. Appellee Fannie Mae, thereafter, removed the matter to the United States District Court for the Central District of California. (Pet'r App. E at 45a-49a.) All other Appellees concurrently joined in Fannie Mae's removal of the action. Fannie Mae's sole basis of removal was under a belief that its congressionally created charter, 12 U.S.C. § 1723a, conferred automatic federal jurisdiction. (Pet'r App. E at 47a.) That statute says Fannie Mae has authority "to sue and be sued, and to complain and defend, *in any court of competent jurisdiction*, State or Federal." 12 U.S.C. § 1723a(a) (emphasis added). Fannie Mae cited this Court's decision in *Am. Nat'l Red Cross v. S.G. & A.E.* ("*Red Cross*"), 505 U.S. 247 (1992), in support of its position that the "sue and be sued" provision in its federal charter confers original and automatic federal jurisdiction over all cases to which Fannie Mae is a party.

After removal, Appellants immediately sought a remand in district court arguing Fannie Mae's charter did not confer automatic federal question jurisdiction. The district court denied Appellants' application to remand on September 5, 2002. (Pet'r App. D at 43a-44a.) The matter lingered in U.S. District Court for the Central District of California for many years. Final judgment was entered pursuant to Fed. R. Civ. Pro. 58, by the district court judge on June 11, 2010. Appellants timely filed a notice of appeal on July 6, 2010, within 30 days of entry of final judgment.

On January 9, 2012, the United States Court of Appeal for the Ninth Circuit issued a decision affirming the District Court's denial of Appellants' motion to remand on the basis that the District Court had removal jurisdiction over state claims filed to circumvent the res judicata impact of a federal judgment. Notably, however, Fannie Mae did not remove the case on that basis. On April 13, 2012, the Ninth Circuit, *sua sponte*, withdrew its memorandum disposition and ordered the parties to submit briefing on the issue of whether the district court had subject matter jurisdiction on the basis of Fannie Mae's federal charter.

On October 2, 2014, the Ninth Circuit held that Fannie Mae's federal charter conferred original jurisdiction in the federal courts, applying the rule this Court articulated in *Red Cross*—*i.e.*, that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." (Pet'r App. B at 3a-40a.)

REASONS FOR GRANTING THE PETITION

The courts of appeal are divided on the frequently reoccurring question of whether a congressional charter permitting a governmental entity to "sue and be sued... in any court of competent jurisdiction, State or Federal" confers original jurisdiction over such suits with the federal courts. Relying on this Court's decision in *Red Cross*, the Ninth Circuit, in its decision below, and the D.C. Circuit have held that this provision confers original jurisdiction. On the other hand, the Second, Third, Fifth, and Seventh Circuits have held that this language does not confer original jurisdiction. District courts have frequently grappled with this issue, but continue to reach opposite conclusions. Thus, while some cases proceed in federal court, others are remanded to state court, where the rules of civil procedure are often more favorable to the plaintiff. This Court's interpretation of Fannie Mae's congressional charter is of significant importance because the congressional charters of other governmental entities have the same or substantially similar language to that of Fannie Mae's. Petitioners request that this Court grant this petition for a writ of certiorari to review this "important question of federal law that has not been, but should be settled by this Court." *See* U.S. S. Ct. R. 10(a), (c).

I. Certiorari Should Be Granted Because Federal Courts are Fractured on the Question of Original Subject Matter Jurisdiction for Cases in which Fannie Mae is a Party.

A. The Ninth Circuit's Decision is Inconsistent with United States Supreme Court Precedent.

In its decision below, the Ninth Circuit held that Fannie Mae's congressional charter, permitting Fannie Mae to "sue and be sued...in any court of competent jurisdiction, State or Federal," confers original jurisdiction in the federal courts. *See Lightfoot*, 769 F.3d at 690. The Ninth Circuit applied this Court's holding in *Red Cross*, which was that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 684. However, the Ninth Circuit's decision is inconsistent with this Court's precedent.

As an initial matter, the Ninth Circuit's decision is inconsistent with this Court's determination that Congress intended the language at issue to waive governmental immunity from suit, not to confer jurisdiction. For example, in *Keifer & Keifer*, this Court analyzed the congressional charter of the Reconstruction Finance Corporation, which granted the authority to "sue and be used, to complain and to defend, in any court of competent jurisdiction, State or Federal," *see Keifer & Keifer v. Reconstruction Fin. Corp.*, 306 U.S. 381, 392-96 (1939)—the *exact* language at issue in Fannie Mae's congressional charter, *see* 12 U.S.C. § 1723a(a). This Court noted that, at that time, Congress had provided for no less than forty corporations that discharged governmental functions, all

of which contained the authority to "sue and be sued." *See Keifer & Keifer*, 306 U.S. at 390 & n.3. This Court held that the language at issue reflected Congress's intent to waive governmental immunity from suit; it did not hold that the language also conferred jurisdiction. *Id.* at 392-96. Accordingly, when Congress permits an entity to "sue and be sued...in any court of competent jurisdiction, State or Federal," such a provision is intended to waive governmental immunity. *See also Fed. Hous. Admin. v. Burr*, 309 U.S. 242 (1940) (holding that the provision "sue and be sued in any court of competent jurisdiction, State or Federal" was a waiver of governmental immunity that should be liberally construed, allowing the Federal Housing Administration to be sued for garnishment for moneys due to an employee under state law).

The Ninth Circuit's rationale is also inconsistent with this Court's decision in *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900). In *Shoshone Mining*, this Court revisited the question of whether "a suit brought in support of an adverse claim under §§ 2325 and 2326 of the Revised Statutes was not a suit arising under the laws of the United States in such a sense as to confer jurisdiction on a Federal court regardless of the citizenship of the parties." 177 U.S. at 505. In the relevant statutes, Congress authorized a litigant to proceed "in a court of competent jurisdiction." *Id.* at 506. This Court held that this provision did not, by itself, confer original jurisdiction in the federal courts; instead, the federal courts could only exercise jurisdiction over such a suit if there was an independent basis for federal jurisdiction. *Id.* at 506-7. The Court explained as follows:

> [Congress] did not in express language prescribe either a Federal or a state court, and did not provide for exclusive or concurrent jurisdiction. If it had intended that the jurisdiction should be vested only in the Federal courts, it would undoubtedly have said so. *If it had intended that any new rule of demarcation between the jurisdiction of the Federal and state courts should apply, it would likewise undoubtedly have said so. Leaving the matter as it did, it unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts...* [I]t would be true that if the amount in controversy was not in excess of $2,000, or if the parties were not citizens of different states, and the suit was not one arising under the Constitution or laws of the United States, the Federal courts could not take jurisdiction.

Id. (emphasis added). Pursuant to *Shoshone Mining Co.*, when Congress intends any new "rule of demarcation" between the jurisdiction of the federal and state courts, Congress must so state. Otherwise, federal courts must have an independent basis for jurisdiction—*i.e.*, diversity of citizenship or federal question jurisdiction.

The only distinction between Fannie Mae's congressional charter and the provision at issue in *Shoshone Mining Co.* is the inclusion of the phrase "State or Federal." *Compare Shoshone Mining Co.*, 177 U.S. at 506, *with* 12 U.S.C. § 1723a(a). Fannie Mae's congressional charter allows for suit "in any court of competent

jurisdiction, *State or Federal*." 12 U.S.C. § 1723a(a). Here, just as this Court in *Shoshone Mining Co.* held that the phrase "in any court of competent jurisdiction" did not require a new "rule of demarcation" between the jurisdiction of the federal and state courts, neither does the addition of the phrase "State and Federal." On its face, Fannie Mae's congressional charter treats state and federal courts equally in that the phrase "in any court of competent jurisdiction" modifies both "State" and "Federal." Thus, under the rationale of *Shoshone Mining Co.*, state and federal courts must have an independent source of jurisdiction. The Ninth Circuit's decision that including the phrase "State or Federal" confers original jurisdiction with the federal courts is inconsistent with this Court's holding in *Shoshone Mining Co.*

In its decision below, the Ninth Circuit found that Congress must have intended the inclusion of the phrase "State or Federal" to confer original jurisdiction with the federal courts. *See Lightfoot*, 769 F.3d at 685-86. However, the Ninth Circuit's rationale ignores the likelihood that Congress retained the phrase "State or Federal" out of concern that the congressional charter might be read to limit jurisdiction to either the federal courts or the state courts in light of this Court's decisions in cases such as *State of Minnesota v. United States*, 305 U.S. 382 (1939), and *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1946). *Cf. Red Cross*, 505 U.S. at 275 (Scalia, J., dissenting) ("The addition of the words 'State or Federal' eliminates the possibility that the language 'courts of law and equity within the jurisdiction of the United States' that was contained in the original charter... might be read to limit the grant of capacity to sue in federal court.").

In *State of Minnesota*, the State brought suit in state court to take, pursuant to state law, nine allotted parcels of land, some of which belonged to the Grand Portage Indian Reservation, which was formed under federal law. 305 U.S. at 383. In determining whether the state court had jurisdiction to hear the case, the Court explained that "Congress has provided generally for suits against the United States in *federal courts*. And it rests with Congress to determine not only whether the United States may be sued, but in what courts the suit may be brought." *Id.* at 388 (emphasis added). This Court held that, because Congress did not specifically state that such a suit could be brought in state court, the state court did not have jurisdiction to hear the case. *Id.* at 388-89.

Seven years later, in *Kennecott Copper*, this Court analyzed a state statute that permitted taxpayers who wished to challenge a decision of the tax commission or to recover any taxes deemed unlawful to "bring an action in any court of competent jurisdiction," without reference to *either* state or federal courts. 327 U.S. at 574-575, 575 n.1. Federal jurisdiction was claimed under diversity of citizenship and because the controversy arose under the Constitution and the laws of the United States. *Id.* at 576. This Court rejected petitioners' argument that "any court of competent jurisdiction" should be construed to grant jurisdiction to both state and federal courts, and reiterated its rule that "clear declaration of a state's consent to suit against itself in the federal courts on fiscal claims is required." *Id.* at 577-78. Accordingly, because the statute did not specifically state that suit could be brought in federal court, this Court held that the federal courts did not have jurisdiction. *Id.* at 579-80.

Read together, *State of Minnesota* and *Kennecott Copper* could be interpreted to mean that, in order for Congress to ensure that a litigant is able to bring a case in either state or federal court, it *must* include the phrase "in any court of competent jurisdiction, *State or Federal*." Because the Ninth Circuit's decision is inconsistent with this Court's precedent, Petitioners request that this Court grant this petition to resolve this issue.

B. This Court Has Never Directly Addressed Whether Fannie Mae's Congressional Charter Confers Original Jurisdiction with the Federal Courts.

This Court has been repeatedly called upon to determine whether the "sue and be sued" provision in various congressional charters confer original jurisdiction with the federal courts. However, this Court has never analyzed whether Fannie Mae's congressional charter—which states that Fannie Mae may "sue and to be sued... in any court of competent jurisdiction, State or Federal," 12 U.S.C. § 1723a(a)—or any other charter with substantially similar language confers original jurisdiction in the federal courts to every case in which Fannie Mae (or other governmental entity) is a party. Thus, Petitioners request that this Court grant their petition for a writ of certiorari to resolve this issue and create uniformity in the application of the law.

This Court analyzed the first Bank's congressional charter in *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), *rev'd on other grounds*, *Louisville, C. & C.R. Co. v. Letson*, 43 U.S. (1 How.) 497, 555-56 (1844). This Court held that the Bank's charter, which stated

that the Bank was "made able and capable in law...to sue and be sued...in courts of records, or any other place whatsoever," did not confer jurisdiction on the federal courts to adjudicate suits brought by the Bank. Instead, this Court held that the provision "is not understood to enlarge the jurisdiction of any particular court, but to give a capacity to the corporation to appear, as a corporation, in any court which would, by law, have cognizance of the cause, if brought by individuals. *If jurisdiction is given by this clause to the Federal courts, it is equally given to all courts having original jurisdiction, and for all sums, however small they may be.*" *Id.* at 85-86 (emphasis added).

Fifteen years later, this Court analyzed the second Bank's congressional charter, which stated that the Bank was "made able and capable, in law...to sue and be sued... in all state courts having competent jurisdiction, and in any Circuit Court of the United States." *Osborn v. Bank of the United States*, 22 U.S. (1 Wheat.) 738 (1824). In *Osborn*, this Court held that the congressional charter conferred jurisdiction on federal circuit courts because, in contrast with the first Bank's charter which granted the power to sue and be sued in all courts generally, the second Bank's charter granted the power to sue and be sued in *particular* federal courts (*i.e.*, Circuit Courts of Appeal), indicating Congress's intent to grant original jurisdiction to Circuit Courts of Appeal. *Id.* at 818-19.

In *Bankers' Trust Co. v. Texas & Pac. Ry. Co.*, 241 U.S. 295 (1916), nearly a century later, this Court interpreted the Texas & Pacific Railway Company's congressional charter, which stated that the company was able to "sue and be sued...in all courts of law and equity within the

United States." This Court held that the Congressional charter did not confer original jurisdiction with the federal courts for the following reason:

> Congress was not then concerned with the jurisdiction of courts, but with the faculties and powers of the corporation which it was creating; and evidently all that was intended was to render this corporation capable of suing and being sued by its corporate name in any court of law or equity—*Federal, state, or territorial*—whose jurisdiction as otherwise competently defined was adequate to the occasion. Had there been a purpose to take suits by and against the corporation out of the usual jurisdictional restrictions relating to the nature of the suit, the amount in controversy, and the venue, it seems reasonable to believe that *Congress would have expressed that purpose in altogether different words.*

Id. at 303 (emphasis added).

Then, in *D'Oench, Duhme*, while analyzing the question of whether a federal court in a non-diversity action must apply the conflict-of-laws rules of the forum state, this Court noted that the FDIC's Congressional charter granted original jurisdiction with the federal courts. *See D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp.*, 315 U.S. 447, 455-56 (1942). This Court relied on the plain language in the Banking Act of 1933, which granted the FDIC the power "to sue and be sued...in any court of law or equity, State or Federal," as well as the plain language in the 1935 amendment, which included

the provision that "All suits of a civil nature at common law or in equity to which the [FDIC] shall be a party *shall be deemed to arise under the laws of the United States.*" *Id.* at 455-56 & n.2. This Court also cited the Report of the Senate Committee on Banking and Currency, which makes clear that the purpose of this amendment was to confer original federal jurisdiction in FDIC cases. *Id.* at 455 & n.2; *see also S.G. v. Am. Nat. Red Cross*, 938 F.2d 1494, 1499 (1st Cir. 1991) ("The Report of the Senate Committee on Banking and Currency makes clear that the purpose of this amendment was to confer original federal jurisdiction in F.D.I.C. cases.") (citing S.Rep. No. 1007, 74th Cong., 1st Sess. 5), *rev'd on other grounds*, *Red Cross*, 505 U.S. 247.

Most recently, this Court analyzed the Red Cross's congressional charter, which states that the Red Cross is able "to sue and be sued in courts of law and equity, State and Federal, within the jurisdiction of the United States." *See Red Cross*, 505 U.S. at 248; *see also* 36 U.S.C. § 300105. This Court, in a 5-4 decision, held that its precedent established a rule that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Red Cross*, 505 U.S. at 255. Thus, the inclusion of the word "Federal" in the Red Cross congressional charter conferred original jurisdiction in the federal courts. *Id.* at 257.

Fannie Mae's congressional charter is significantly distinguishable from the charters this Court has already analyzed. Whereas the Red Cross's congressional charter allows it "to sue and be sued in courts of law and equity, State and Federal, within the jurisdiction of the United

States," 36 U.S.C. § 300105, Fannie Mae's congressional charter requires it "to sue and be sued...in *any court of competent jurisdiction*, State and Federal," 12 U.S.C. § 1723a(a) (emphasis added). This Court has never directly analyzed whether this exact provision requires litigants to have an *independent* source of subject matter jurisdiction in order to proceed in state or federal court.

C. The Circuit Courts of Appeals are Divided as to Whether a Congressional Charter Permitting an Entity to "Sue and Be Sued...in any Court of Competent Jurisdiction, State or Federal" Confers Original Jurisdiction with the Federal Courts.

The Ninth Circuit and the D.C. Circuit have held that, when a congressional charter permits an entity to sue and be sued *in any court of competent jurisdiction*, state or federal, Congress intended to confer original jurisdiction over every case to which that entity is a party to the federal courts. On the other hand, the Second Circuit, Third Circuit, Fifth Circuit, and Seventh Circuit have held that such language allows the entity to be sued in any state or federal court that has an *independent* source of subject matter jurisdiction.

Prior to the Ninth Circuit's decision in this case, the only Circuit Court of Appeals to address the issue of whether Fannie Mae's congressional charter conferred original jurisdiction with the federal courts was the D.C. Circuit. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat. Mortgage Ass'n v. Raines*, 534 F.3d 779 (D.C. Cir. 2008). In a split decision, the D.C. Circuit Court held that "there is federal jurisdiction

because the Fannie Mae 'sue and be sued' provision expressly refers to the federal courts in a manner similar to the Red Cross statute." *Id.* at 784. The court found that the 1954 amendment to Fannie Mae's congressional charter, in which Congress added the phrase "of competent jurisdiction," did not evidence Congress's intent to require an *independent* source of federal jurisdiction. *Id.* at 785-87. Rather, the court found that the phrase "of competent jurisdiction" clarifies that litigants in state courts of limited jurisdiction must satisfy appropriate jurisdictional requirements, that litigants in state and federal court must establish that court's personal jurisdiction of the parties, that litigants in federal court cannot bring their suit in *any* federal court, but should bring suit in federal district court, and that federal district courts have jurisdiction even over cases that might otherwise be heard in the Court of Federal Claims. *Id.* at 785.

Judge Brown's concurring decision found that the majority decision misunderstood the *Red Cross* decision to mean that the "sue and be sued" clause creates jurisdiction simply because it mentions the federal courts. *Id.* at 795 (Brown, J., concurring). Instead, Judge Brown interpreted *Red Cross* to mean that mentioning federal courts is necessary but not always sufficient to confer original jurisdiction with the federal courts. *Id.* at 795-96. Judge Brown distinguished Fannie Mae's congressional charter from that of the Red Cross based on the inclusion of the phrase "of competent jurisdiction" contained Fannie Mae's charter. *Id.* at 796-99. Judge Brown noted that the term "of competent jurisdiction" modifies the reference to both state and federal courts, and concluded that the provision allows Fannie Mae to be sued in a state or federal court that has an *independent* source of subject matter jurisdiction. *Id.* at 796-99.

Consistent with Judge Brown's concurring opinion in *Pirelli*, the Second Circuit, Third Circuit, Fifth Circuit, and Seventh Circuit have held that congressional charters, such as Fannie Mae's, in which Congress permitted the entity to sue and be sued in "any court of competent jurisdiction, State or Federal," do not confer original jurisdiction with the federal courts. The Second Circuit analyzed the congressional charter for Housing and Urban Development ("HUD"), which is nearly identical to Fannie Mae's in that it authorized the Secretary to "sue and be sued in any court of competent jurisdiction, State or Federal." *See C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *see also* 12 U.S.C. § 1702. The Second Circuit held that the congressional charter was "only a waiver of sovereign immunity and not an independent grant of jurisdiction." *Id.* The Third Circuit similarly held that HUD's "sue and be sued" provision—which is nearly identical to Fannie Mae's—"makes the Secretary suable in his official capacity in a court which is *otherwise* of competent jurisdiction." *See Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974) (emphasis added). In evaluating a contract claim based on state law, the Third Circuit remanded the case to state court because it was "clear that the district court is not otherwise of competent jurisdiction to entertain this lawsuit." *Id.* The Fifth Circuit also held that HUD's "sue and be sued" provision "is plainly no more than a waiver of sovereign immunity and *requires another statute to grant jurisdiction* in order to make a court competent to hear a case against the Secretary otherwise authorized by Section 1702." *See Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980) (emphasis added). The Fifth Circuit has reaffirmed this unambiguous holding in subsequent cases. *See, e.g., Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir. 1981).

The Seventh Circuit Court of Appeals analyzed the congressional charter for the Department of Veteran Affairs, which permitted the Secretary to "sue and be sued... in any court of competent jurisdiction, State or Federal." *See W. Sec. Co., a subsidiary of Universal Mortgage Corp. v. Derwinski*, 937 F.2d 1276, 1279-80 (7th Cir. 1991); *see also* 38 U.S.C. § 3720(a)(1). The Seventh Circuit held that the congressional charter "is better read as a waiver of sovereign immunity than as a grant of jurisdiction," and that it "emphatically does not mean that it could have been filed in federal district court instead, for federal jurisdiction is statutory and [the 'sue and be sued' provision] is not a grant of jurisdiction." *Id.* at 1279.

With its decision below, the Ninth Circuit has rejected the interpretation of the Second, Third, Fifth and Seventh Circuit and adopted the D.C. Circuit's view that the statutory language permitting an entity to "sue and be sued...in any court of competent jurisdiction, State or Federal" confers original jurisdiction with the federal courts. Because the Circuit Courts of Appeals are split as to their interpretation of the language contained in Fannie Mae's congressional charter, this Court should grant this Petition to resolve the conflict.

D. The District Court Decisions Interpreting the Language Contained in Fannie Mae's Congressional Charter Lack Uniformity.

Some district courts, relying primarily on the bright-line rule stated by this Court in *Red Cross*, have held that Fannie Mae's federal charter confers original jurisdiction with the federal courts. *See, e.g., Jeong v. Fed. Nat'l Mortgage Ass'n*, No. A-14-CA-920-SS, 2014 WL 5808594,

at *2 n.1 (W.D. Tex. Nov. 7, 2014); *Fed. Home Loan Bank of Boston v. Ally Fin., Inc.*, No. 11–CV–10952, 2012 WL 769731, at *1–3 (D. Mass. Mar. 9, 2012); *Griffin v. Fed. Nat'l Mortgage Ass'n, Inc.*, No. 2:10-cv-00306-TJW-CE, 2010 WL 5535618, at *1-2 (E.D. Tex. Dec. 9, 2010); *Allen v. Wilford & Geske*, No. 10-4747, 2010 WL 4983487, at *2 (D. Minn. Dec. 2, 2010); *In re Fannie Mae 2008 Sec. Litig.*, No. 08 Civ. 7831, 2009 WL 4067266, at *3 (S.D.N.Y. Nov. 24, 2009); *Grun v. Countrywide Home Loans, Inc.*, No. 03–CV–0141, 2004 WL 1509088, at *2 (W.D. Tex. July 1, 2004); *Connelly v. Fed. Nat'l Mortgage Ass'n*, 251 F. Supp. 2d 1071, 1072-73 (D. Conn. 2003); *C.C. Port, Ltd. V. Davis-Penn Mortgage Co.*, 891 F. Supp. 371, 372 (S.D. Tex. 1994); *Peoples Mortgage Co., Inc. v. Fed. Nat'l Mortgage Ass'n*, 856 F. Supp. 910, 917 (E.D. Pa. 1994).

However, even in light of this Court's decision in *Red Cross* and the D.C. Circuit's decision in *Pirelli*, the district courts have split on this question. Many district courts have explicitly adopted the reasoning of Judge Brown's concurring decision in *Pirelli*. *See, e.g., Kennedy v. Fed. Nat'l Mortgage Ass'n*, No. 13–CV–203, 2014 WL 3905593, at *6 (E.D.N.C. Aug. 11, 2014) (acknowledging that Judge Brown's decision has been "widely-praised"); *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortgage Sec., Inc.*, No. 10–CV–1463, 2011 WL 2133539, at *2 (S.D. Ind. May 25, 2011) (adopting Judge Brown's "well-reasoned" concurring decision); *Fed. Home Loan Bank of Chicago v. Banc of Am. Funding Corp.*, 760 F. Supp. 2d 807, 809 (N.D. Ill. 2011) (describing Judge Brown's concurring decision as "powerful" and adopting its reasoning). In fact, the majority of the district courts to consider this issue have held that the language contained in Fannie Mae's charter does not confer original jurisdiction. *See, e.g.*,

Warren v. Fed. Nat'l Mortgage Ass'n, No. 14–CV–0784, --- F. Supp. 3d ---, 2014 WL 4548638 (N.D. Tex. Sept. 15, 2014); *Kennedy v. Fed. Nat'l Mortgage Ass'n*, No. 13–CV–203, 2014 WL 3905593, at *5–6 (E.D.N.C. Aug. 11, 2014); *Fed. Nat'l Mortgage Ass'n v. Davis*, 963 F. Supp. 2d 532, 537-43 (E.D. Va. 2013); *Carter v. Watkins*, No. 12–CV–2813, 2013 WL 2139504, at *3–4 (D. Md. May 14, 2013); *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortgage Sec., Inc.*, No. 10–CV–1463, 2011 WL 2133539, at *1–2 (S.D. Ind. May 25, 2011) (construing the FHLB's substantively identical sue-and-be-sued clause); *Fed. Home Loan Bank of Atlanta v. Countrywide Sec. Corp.*, No. 11–CV–489, 2011 WL 1598944, at *3 (N.D. Ga. Apr. 22, 2011) (construing FHLB charter); *Fed. Home Loan Bank of Chicago v. Banc of Am. Sec. LLC*, 448 B.R. 517, 527 (C.D. Cal. 2011) (construing FHLB charter); *Fed. Home Loan Bank of Chicago v. Banc of Am. Funding Corp.*, 760 F. Supp. 2d 807, 809–10 (N.D. Ill. 2011) (construing FHLB charter); *Rincon Del Sol, LLC v. Lloyd's of London*, 709 F. Supp. 2d 517, 522–25 (S.D. Tex. 2010); *Fed. Home Loan Bank of S.F. v. Deutsche Bank Secs., Inc.*, Nos. 10–3039, 10–3045, 2010 WL 5394742, at *6–8 (N.D. Cal. Dec. 20, 2010) (construing FHLB charter); *Fed. Home Loan Bank of Seattle v. Deutsche Bank Secs., Inc.*, 736 F.Supp.2d 1283, 1286 (W.D. Wash. 2010) (construing FHLB charter); *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559, 562–65 (S.D. W.Va. 2007); *Poindexter v. Nat'l Mortgage Co.*, No. 94 C 5814, 1995 WL 242287, at *10 (N.D. Ill. Apr. 24, 1995) ("12 USC § 1723a(a), is distinguished by the phrase 'in any court of competent jurisdiction, State or Federal,' implying that one must look elsewhere to determine competence").

With its decision below, the Ninth Circuit joined the D.C. Circuit in holding that Fannie Mae's congressional

charter confers original jurisdiction in the federal courts. However, both private individuals and corporate entities share a need for a conclusive judicial determination regarding the frequently reoccurring question of whether the federal courts have original jurisdiction over any case to which Fannie Mae is a party. Because there continues to be a conflict among federal courts regarding whether Fannie Mae's congressional charter confers original jurisdiction in the federal courts, Petitioners request that this Court grant this petition to resolve this issue. *See* U.S. S. Ct. R. 10(a).

II. The Question is of Significant National Importance.

Since the housing market crashed in 2007 and 2008, there has been a significant increase in lawsuits brought by or against Fannie Mae. Due to the increase in litigation, the issue of whether a congressional charter, such as Fannie Mae's, that allows an entity to "sue and be sued" "in any court of competent jurisdiction, State or Federal" confers original jurisdiction in the federal courts has arisen with considerable frequency. After conducting a preliminary review, Petitioners' counsel was able to identify 25 cases decided in the years since the housing market crashed, in which a district court was asked to determine whether the language contained in Fannie Mae's congressional charter conferred original jurisdiction in the federal courts. These cases are spread among the federal district courts of 13 states, located in 8 circuits. Without a decision from this Court, litigants will be forced to continue to engage in costly and time consuming litigation, removing cases to federal court on the basis of Fannie Mae's congressional charter and challenging removal on that basis.

Moreover, without a decision from this Court, whether litigants' are forced to proceed in federal or state court will largely depend on the views of the particular judge assigned to their case. For example, in the Southern District of Texas, United States District Court Judge Janis Jack held, without analysis, that, pursuant to 12 U.S.C. § 1723a, the federal court had original jurisdiction and the suit against Fannie Mae was properly removed. *See C.C. Port, Ltd. v. Davis-Penn Mortgage Co.*, 891 F. Supp. 371, 372 (S.D. Tex. 1994). In the same court, United States District Court Judge David Hittner issued one of the strongest rebukes of original jurisdiction based on Fannie Mae's congressional charter. *See Rincon Del Sol, LLC v. Lloyd's of London*, 709 F. Supp. 2d 517, 522–25 (S.D. Tex. 2010). This uncertainty and variation regarding jurisdiction fosters unnecessary and expensive litigation regarding removal jurisdiction and deprives litigants of due process.

Because of the significant differences between state and federal civil procedure, those plaintiffs who are fortunate enough to have their case remanded to state court have an advantage over plaintiffs who are forced to pursue their case in federal court. For example, in federal court, the jury verdict must be unanimous. *See* Fed. R. Civ. P. 48(b). However, in many state courts, a plaintiff can prevail without a unanimous jury verdict. *See, e.g.*, Alaska Stat. Ann. § 09.20.100 ("In a civil case tried by a jury in any court, whether of record or not, not less than five-sixths of the jury may render a verdict."); Ariz. Rev. Stat. Ann. § 21-102(C) ("A jury for trial in any court of record of a civil case shall consist of eight persons, and the concurrence of all but two shall be necessary to render a verdict."); Ark. R. Civ. P. 48 ("Where as many as nine out

of twelve jurors in a civil case agree upon a verdict, the verdict shall be returned as the verdict of such jury."); Cal. Civ. Proc. Code § 618 ("When the jury, or three-fourths of them, have agreed upon a verdict, they must be conducted into court and the verdict rendered by their foreperson."); Haw. Rev. Stat. § 635-20 ("In all civil cases tried before a jury it shall be sufficient for the return of a verdict if at least five-sixths of the jurors agree on the verdict."); Idaho R. Civ. P. 48 ("Three-fourths (¾) of the jury may render a verdict."); Kan. Stat. Ann. § 60-248(g) ("When the jury consists of 12 members, the agreement of 10 jurors is sufficient to render a verdict."); Ky. Rev. Stat. Ann. § 29A.280(3) ("The agreement of at least three-fourths (3/4) of the jurors is required for a verdict in all civil trials by jury in Circuit Court.").

By way of illustration only, and not by way of limitation, in the Southern District of Texas, a plaintiff prevailing in his motion to remand his case to state court before Judge Hittner, need only persuade five-sixths of the jurors at trial. *See* Tex. R. Civ. P. 292(a) ("[A] verdict may be rendered in any cause by the concurrence, as to each and all answers made, of the same ten or more members of an original jury of twelve or of the same five or more members of an original jury of six"). On the other hand, if that same plaintiff's case was assigned to Judge Jack, he would remain in federal court and would have to secure a unanimous verdict in order to prevail. *See* Fed. R. Civ. P. 48(b). It is plain that such differences can determine the outcome of certain cases. This Court should grant this petition for certiorari to create uniformity in the law because the outcome of one's case should turn on the merits, rather than the judge assigned to the case.

The question presented in this matter will also resolve conflict over the interpretation of various other statutes that contain nearly identical language to that in Fannie Mae's charter. *See, e.g.*, 12 U.S.C. § 1432 ("[Each Federal Home Loan Bank] shall have the power...to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal."); 12 U.S.C. § 1441(c)(8) ("[The Financing Corporation shall have the power] To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the Financing Corporation in any State or Federal court of competent jurisdiction."); 12 U.S.C. § 1702 ("The Secretary [of HUD] shall... be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."); 12 U.S.C. § 3012(6) ("[The National Consumer Cooperative] Bank...shall have the power to... sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal"); 15 U.S.C. § 77dd ("The Corporation [of Foreign Security Holders] shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal"); 38 U.S.C. § 3720(a)(1) ("the Secretary [of Veterans' Affairs] may sue and be sued in the Secretary's official capacity in any court of competent jurisdiction, State or Federal.").

III. The Ninth Circuit Incorrectly Held that Fannie Mae's Federal Charter Confers Federal Subject Matter Jurisdiction for Every Case to which Fannie Mae is a Party.

For the reasons set forth in Judge Brown's concurring opinion in *Pirelli* and Judge Stein's dissent in *Lightfoot*, the Ninth Circuit's decision below should be reversed. *See Pirelli*, 534 F.3d at 795-800 (Brown, J., concurring); *Lightfoot*, 769 F.3d at 690-99 (Stein, J., dissenting); *cf. Red Cross*, 505 U.S. at 265-75 (Scalia, J., dissenting).

In sum, the Ninth Circuit's decision is in conflict with well-established principles of statutory interpretation. Ordinarily, the plaintiff is entitled to select the forum in which he wishes to proceed. *See, e.g., Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007) (referencing "the consideration ordinarily accorded the plaintiff's choice of forum"); *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831–32 (2002) (discussing extent to which plaintiff is master of the complaint). As this Court has explained:

> Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. Absent diversity of citizenship, federal-question jurisdiction is required. The presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. *See Gully v. First National Bank*,

> 299 U.S. 109, 112–113, 57 S.Ct. 96, 97–98, 81 L.Ed. 70 (1936). The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.

Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) ("Under the "well-pleaded complaint" doctrine, the plaintiff is master of his claim and may avoid federal removal jurisdiction by exclusive reliance on state law."). Further, due to federalism concerns, the removal statute should be construed strictly in favor of remand. *See Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09 (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) ("The policy of the statute calls for its strict construction.").

In order to determine whether Congress intended to confer original jurisdiction in the federal courts, "[w]e start, of course, with the statutory text," and "[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *See Sebelius v. Cloer*, 133 S. Ct. 1886, 1893 (2013) (quoting *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)); *see also Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173 (1994); *Perrin v. United States*, 444 U.S. 37, 42 (1979). Here, there is nothing in the statutory text that indicates that Congress intended Fannie Mae's "sue and be sued" provision to confer original jurisdiction with the federal courts. The provision permitting Fannie Mae to "sue and be sued... in any court of competent jurisdiction, State or Federal" does not distinguish among the federal courts, nor does it treat federal courts differently than state courts. *Cf. Red Cross*, 505 U.S. 267-68 (Scalia, J., dissenting). Here, the Ninth Circuit incorrectly held that Fannie Mae's

charter grants the federal district courts with jurisdiction over any such action, where no such language exists. *See Shoshone Mining Co.*, 177 U.S. at 506-7 ("If [Congress] had intended that any new rule of demarcation between the jurisdiction of the Federal and state courts should apply, it would likewise undoubtedly have said so. Leaving the matter as it did, it unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts"); *Deveaux*, 9 U.S. (5 Cranch) at 85-86 ("If jurisdiction is given by this clause to the Federal courts, it is equally given to all courts having original jurisdiction, and for all sums, however small they may be."); *Bankers' Trust*, 241 U.S. at 303 ("Had there been a purpose to take suits by and against the corporation out of the usual jurisdictional restrictions relating to the nature of the suit, the amount in controversy, and the venue, it seems reasonable to believe that *Congress would have expressed that purpose in altogether different words.*") (emphasis added).

The Supreme Court has repeatedly emphasized the phrase "competent jurisdiction" almost always refers to subject-matter jurisdiction. *See Wachovia Bank, Nat'l Ass'n v. Schmidt*, 546 U.S. 303, 316 (2006); *United States v. Morton*, 467 U.S. 822, 828 (1984); *Califano v. Sanders*, 430 U.S. 99, 106 n.6 (1977) ("[J]udicial review is to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction.' Both of these clauses seem to look to outside sources of jurisdictional authority."); *Shoshone Mining Co.*, 177 U.S. at 506-7 (interpreting the phrase "in any court of competent jurisdiction" to mean any court with an independent sources of subject matter jurisdiction). When Congress uses statutory language that has been

given a consistent judicial construction, this Court often adheres to that construction in interpreting the statutory language. *See, e.g.*, *Keene Corp. v. United States*, 508 U.S. 200, 212–13 (1993); *Pierce v. Underwood*, 487 U.S. 552, 567 (1988); *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978). In Fannie Mae's congressional charter, the phrase "in any court of competent jurisdiction" modifies both "State" and "Federal." For the phrase "any court of competent jurisdiction" to have any meaning it should be read as differentiating between state and federal courts that possess "competent" jurisdiction—*i.e.*, an independent basis for jurisdiction—from those that do not. Thus, Fannie Mae's charter does not confer original jurisdiction in the federal courts, but rather indicates Congress's intent to require both state and federal courts to have an independent source of subject matter jurisdiction.

Had Congress intended to confer original jurisdiction with the federal courts, it certainly knew how to do so. *See, e.g.*, 12 U.S.C. § 1819(b)(1) ("[A]ll suits of a civil nature at common law or in equity to which the [FDIC] shall be a party *shall be deemed to arise under the laws of the United States.*"); 12 U.S.C. § 1441b ("any civil action, suit, or proceeding to which the Funding Corporation is a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction over such action, suit, or proceeding"); 12 U.S.C. § 1452(f)(2) ("all civil actions to which the [Federal Home Loan Mortgage] Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value"); 12 U.S.C. § 2279aa-14(2) ("All civil actions to which the [Federal Agricultural Mortgage] Corporation is a party shall be deemed to arise under the

laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value."); 15 U.S.C. § 1819(b)(2)(a) ("[The Small Business Administration may] sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and *jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy*") (emphasis added); 19 U.S.C. § 3473(b) ("Any such action to which the [Border Environment Cooperation] Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of Title 28) shall have original jurisdiction of any such action."); 22 U.S.C. § 290m(g) ("any such action to which the [North American Development] Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have original jurisdiction of any such action."); *see also Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver*, N.A., 511 U.S. 164, 177 (1994) ("If, as respondents seem to say, Congress intended to impose aiding and abetting liability, we presume it would have used the words 'aid' and 'abet' in the statutory text. But it did not."); *Pinter v. Dahl*, 486 U.S. 622, 650 (1988) ("When Congress wished to create such liability, it had little trouble doing so"); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 734 (1975) ("When Congress wished to provide a remedy to those who neither purchase nor sell securities, it had little trouble in doing so expressly"). However, Congress has not conferred original jurisdiction for every case to which Fannie Mae is a party to the federal courts.

This position is further supported by Congress's 1974 amendment to Fannie Mae's congressional charter. As noted by Judge Sidney H. Stein in his dissent below, prior to 1974, both Fannie Mae and Ginnie Mae were required to "maintain [their] principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof." *See Lightfoot*, 769 F.3d at 697 (Stein, J., dissenting). In 1974, Congress amended this provision to provide that Fannie Mae "shall be deemed, for purposes of *jurisdiction* and venue in civil actions, to be a District of Columbia corporation." *Id.* (emphasis in original); *see* 12 U.S.C. § 1717(a)(2)(B). Congress intended this amendment to give Fannie Mae access to the federal courts pursuant to diversity of jurisdiction. *Id.* at 697-98. Fannie Mae would have no need to use diversity jurisdiction, if the federal courts had original jurisdiction over any case to which Fannie Mae was a party. Thus, Congress's decision to allow Fannie Mae to access federal courts through diversity jurisdiction evidences its understanding that the federal courts did not otherwise have original jurisdiction. This Court should grant a writ of certiorari because the Ninth Circuit incorrectly held that Fannie Mae's "sue and be sued" provision confers original jurisdiction in the federal courts.

IV. The Petition for a Writ of Certiorari Should Be Granted to Review This Court's Decision in *Red Cross*.

In its decision below, the Ninth Circuit relied heavily on the "bright-line" rule stated by this Court in *Red Cross*. *See Lightfoot*, 769 F.3d at 684 ("When federal charters, like those of the Red Cross and of Fannie Mae, 'expressly

authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction.'") (*quoting Red Cross*, 505 U.S. at 257). For the reasons set forth in Justice Scalia's dissent in *Red Cross*, the majority's decision is not supported by either the plain language of the Red Cross federal charter or the legislative history, and is inconsistent with this Court's previous decisions that analyzed whether congressional charters confer original jurisdiction in the federal courts. *See Red Cross*, 505 U.S. at 265-75 (Scalia, J., dissenting). Accordingly, Appellants respectfully petition this Court to grant a writ of certiorari to review its decision in *Red Cross*.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDREW H. FRIEDMAN
Counsel of Record
ANDREA K. LOVELESS
GREGORY D. HELMER
HELMER FRIEDMAN, LLP
8522 National Boulevard, Suite 107
Culver City, California 90232
(310) 396-7714
afriedman@helmerfriedman.com

Attorneys for Petitioners

APPENDIX

APPENDIX A — DENIAL OF REHEARING *EN BANC* IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 20, 2014

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 10-56068

CRYSTAL MONIQUE LIGHTFOOT;
BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs-Appellants,

v.

CENDANT MORTGAGE CORPORATION,
doing business as PHH Mortgage; FREDDIE MAC;
ROBERT O. MATTHEWS; ATTORNEYS EQUITY
NATIONAL CORPORATION,

Defendants-Appellees.

D.C. No. 2:02-cv-06568-CBM-AJW
Central District of California,
Los Angeles

Before: TROTT and W. FLETCHER, Circuit Judges, and STEIN, District Judge.*

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*. The Honorable Sidney H. Stein, District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

Appendix A

Judge W. Fletcher has voted to deny the petition for rehearing en banc; and Judge Trott so recommends. Judge Stein recommends that the petition for rehearing *en banc* be granted.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter *en banc*. Fed. R. App. P. 35.

The petition for rehearing en banc, filed October 2, 2014, is hereby DENIED.

APPENDIX B — OPINION OF THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT FILED OCTOBER 2, 2014

United States Court of Appeals,
Ninth Circuit

Crystal Monique LIGHTFOOT;
Beverly Ann Hollis–Arrington,

Plaintiffs–Appellants,

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; Fannie Mae; Robert O. Matthews; Attorneys Equity National Corporation,

Defendants–Appellees.

No. 10–56068
Argued and Submitted June 5, 2013
Filed Oct. 2, 2014.

Before: STEPHEN S. TROTT and WILLIAM A. FLETCHER, Circuit Judges, and SIDNEY H. STEIN, District Judge.*

Opinion by Judge W. Fletcher; Dissent by Judge Stein.

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* The Honorable Sidney H. Stein, District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

Appendix B

OPINION

W. FLETCHER, Circuit Judge:

Plaintiffs Beverly Ann Hollis–Arrington and Crystal Monique Lightfoot appeal the district court's judgment dismissing their claims against the Federal National Mortgage Association ("Fannie Mae"). They argue that the district court lacked subject matter jurisdiction over their claims. We disagree. Under the rule announced in *American National Red Cross v. S.G.*, 505 U.S. 247, 112 S.Ct. 2465, 120 L.Ed.2d 201 (1992), Fannie Mae's federal charter confers federal question jurisdiction over claims brought by or against Fannie Mae. We affirm the district court.

I. Background

This case is one of several brought by the plaintiffs following foreclosure proceedings initiated by Fannie Mae against Hollis–Arrington's home in West Hills, California. Hollis–Arrington first filed two suits in the United States District Court for the Central District of California, alleging numerous state-and federal-law claims against Fannie Mae and other defendants. The district court dismissed both suits, and we affirmed on appeal. *Hollis–Arrington v. Cendant Mortg. Corp.*, 61 Fed.Appx. 462 (9th Cir.2003); *Hollis–Arrington v. Cendant Mortg. Corp.*, 61 Fed.Appx. 463 (9th Cir.2003).

Plaintiffs then filed the present suit in California state court, alleging state-law claims similar or identical to

those in the two earlier federal suits. Fannie Mae removed to federal court, arguing that the sue-and-be-sued clause in its federal corporate charter conferred federal question subject matter jurisdiction. Plaintiffs filed a motion to remand, which the district court denied. The district court dismissed all of plaintiffs' claims as barred by res judicata and collateral estoppel. We initially affirmed in an unpublished disposition. *Lightfoot v. Cendant Mortg. Corp.*, 465 Fed.Appx. 668 (9th Cir.2012). We later withdrew that disposition, appointed pro bono counsel, and ordered the parties to brief whether Fannie Mae's federal charter granted the district court subject matter jurisdiction. *Lightfoot v. Cendant Mortg. Corp.*, No. 10–56068 (Apr. 13, 2012) (order withdrawing disposition).

II. Discussion

A. Fannie Mae's Charter

The sue-and-be-sued clause in Fannie Mae's charter authorizes Fannie Mae "to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). We hold that this language confers federal question jurisdiction over claims brought by or against Fannie Mae. In so holding, we do not write on a clean slate. In *Red Cross*, the Supreme Court gave us a clear rule for construing sue-and-be-sued clauses for federally chartered corporations. The Court held that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255, 112 S.Ct. 2465.

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The question in *Red Cross* was whether the American National Red Cross's federal charter conferred federal question jurisdiction over suits brought by or against the Red Cross. The sue-and-be-sued clause in the Red Cross's charter authorized the Red Cross "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Id.* at 248, 112 S.Ct. 2465. The Court held that the clause conferred federal question jurisdiction. *Id.* at 257, 112 S.Ct. 2465. Justice Scalia dissented for himself and three others. He and his fellow dissenters would have held that the clause conferred only corporate capacity to sue and be sued, and that subject matter jurisdiction had to be conferred by some other provision of federal law. *Id.* at 265, 112 S.Ct. 2465 (Scalia, J., dissenting).

The Court based its holding on a line of cases, stretching back to *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 6 L.Ed. 204 (1824), that made clear that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts. *Red Cross*, 505 U.S. at 252–56, 112 S.Ct. 2465. The Court in *Osborn* held, in an opinion by Chief Justice Marshall, that a clause authorizing the second Bank of the United States "to sue and be sued ... in all state courts having competent jurisdiction and in any circuit court of the United States" conferred federal question jurisdiction. 22 U.S. (9 Wheat.) at 817–18. Chief Justice Marshall distinguished *Osborn* from *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 3 L.Ed. 38 (1809), in which the Court had held that the charter of the first Bank of the United States did *not* confer federal

subject matter jurisdiction because that bank's charter authorized the bank to "sue and be sued ... in Courts of record," without specifying the federal courts. *Osborn*, 22 U.S. (9 Wheat.) at 817–18; *Deveaux*, 9 U.S. (5 Cranch) at 85. Chief Justice Marshall wrote that, in contrast to the first bank's charter, the second bank's charter could not have been "more direct and appropriate" in conferring federal question jurisdiction. *Osborn*, 22 U.S. (9 Wheat.) at 817.

Almost a century later, the Court held in *Bankers' Trust Co. v. Texas & Pacific Railway*, 241 U.S. 295, 36 S.Ct. 569, 60 L.Ed. 1010 (1916), that a federal corporate charter did not confer federal question jurisdiction when it authorized a railroad "to sue and be sued ... in all courts of law and equity within the United States." *Id.* at 304–05, 36 S.Ct. 569. That language had "the same generality and natural import" as the language in *Deveaux* because it did not specifically mention the federal courts. *Id.* at 304, 36 S.Ct. 569; *see Red Cross*, 505 U.S. at 254, 112 S.Ct. 2465. Then, in *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942), the Court upheld federal question jurisdiction based on a federal charter authorizing the Federal Deposit Insurance Corporation to sue or be sued "in any court of law or equity, State or Federal." *Id.* at 455, 62 S.Ct. 676.

The Court wrote in *Red Cross* that these cases established a "rule" that would have been known to Congress at least as far back as 1942, when *D'Oench* was decided. *Red Cross*, 505 U.S. at 255–57, 259–60, 112 S.Ct. 2465. When federal charters, like those of the Red Cross and of Fannie Mae, "expressly authoriz[e] the organization to sue and be sued

in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction." *Id.* at 257, 112 S.Ct. 2465. As the Court of Appeals for the D.C. Circuit has already held, that rule resolves this case. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C.Cir.2008) (holding, based on Fannie Mae's charter, that federal question jurisdiction exists over suits brought by or against Fannie Mae).

Despite the specific reference to federal courts in Fannie Mae's sue-and-be-sued clause, our dissenting colleague contends that the clause does not confer federal question jurisdiction. Like Justice Scalia and his fellow dissenters in *Red Cross*, the dissent argues that the clause confers only corporate capacity to sue and be sued, and that subject matter jurisdiction must come from some other provision of federal law. Dissent at 23. The dissent relies on the phrase "court of competent jurisdiction" in the clause. Before 1954, Fannie Mae, like the Red Cross, had the statutory authority to "sue and be sued; complain and defend, in any *court of law or equity*, State or Federal." H.R.Rep. No. 83–1429, at 82 (1954) (emphasis added). In 1954, as one of many changes to Fannie Mae's charter, Congress amended Fannie Mae's sue-and-be-sued clause to authorize it "to sue and to be sued, and to complain and to defend, in any *court of competent jurisdiction*, State or Federal." Housing Act of 1954, Pub.L. No. 83–560, § 201, 68 Stat. 590, 620 (codified as amended at 12 U.S.C. § 1723a(a)) (emphasis added).

Appendix B

The dissent acknowledges that Fannie Mae's pre–1954 charter conferred federal question jurisdiction, but argues that Congress eliminated that jurisdiction by replacing the phrase "court of law or equity" with "court of competent jurisdiction." Dissent at 23–24. We disagree. Eliminating the charter's grant of federal question jurisdiction would have imposed a severe new restraint on Fannie Mae's ability to litigate in federal court. Under the general federal question jurisdiction statute, 28 U.S.C. § 1331, Fannie Mae would have been restricted by the well-pleaded complaint rule. *See, e.g., Franchise Tax Bd. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 9–10, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126 (1908). Given that Fannie Mae is often sued under state-law causes of action, § 1331 would have conferred jurisdiction in a relatively small number of cases. Diversity jurisdiction under 28 U.S.C. § 1332, if it existed at all, would have been unavailable in many, perhaps most, cases because Fannie Mae suits typically involve mortgage transactions to which there are multiple parties, often resulting in a lack of complete diversity. *See Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68, 117 S.Ct. 467, 136 L.Ed.2d 437 (1996).

There is no indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase "court of law or equity" with the phrase "court of competent jurisdiction." Neither the House nor the Senate report on Fannie Mae's 1954 amendments so much as mentions the "court of competent jurisdiction" language. *See* H.R.Rep. No. 83–1429, at 19–24, 43–50; S.Rep. No.

83–1472, at 33, 74–75 (1954). Given the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or the Senate to have said something if they intended a change of that sort. Instead, there was silence.

In our view, the most likely explanation for replacing the phrase "court of law or equity" with "court of competent jurisdiction" is that Congress was simply modernizing Fannie Mae's charter. At our founding and for many years thereafter, the federal court system and most state court systems had separate law and equity courts. By the middle of the 20th century, however, the federal courts and almost every state had abandoned the law/equity division. *See* Leonard J. Emmerglick, *A Century of the New Equity*, 23 Tex. L.Rev. 244, 244 n.1 (1945). The Federal Rules of Civil Procedure merged law and equity in the federal courts in 1938. *Id.* By 1945, only five states continued to have separate law and equity courts. *Id.* At the time of the 1954 amendment, Fannie Mae's charter's reference to "court[s] of law or equity" had become an antiquarian relic with little relevance to the American legal system.

The change in Fannie Mae's sue-and-be-sued clause is best explained as getting rid of this anachronism, as Congress had recently done in other statutes. In 1948, in response to the Federal Rules of Civil Procedure's elimination of the law/equity distinction, Congress removed a number of references to "law or equity" in the statutes defining federal district court jurisdiction. *See* Act of June 25, 1948, Pub.L. No. 80–773, §§ 1332, 1343, 1345–46, 62 Stat. 869, 930–33; H.R.Rep. No. 80–3214, at A115, A121, A123 (1948).

Appendix B

In 1954, as we discuss in more detail below, Congress exchanged "court of law or equity" for "court of competent jurisdiction" not just in Fannie Mae's charter, but also in the charters of the Federal Savings and Loan Insurance Corporation ("FSLIC") and the Home Loan Bank Board.

If Congress wanted to eliminate the grant of federal question jurisdiction from Fannie Mae's charter, it is highly unlikely that it would have done so in the way the dissent suggests. In 1954, Congress had no reason to think that replacing the phrase "court of law or equity" with the phrase "court of competent jurisdiction" would eliminate federal question jurisdiction under Fannie Mae's sue-and-be-sued clause. Supreme Court cases from *Deveaux* to *D'Oench* had put Congress on notice that a specific reference to the federal courts was "necessary *and sufficient* to confer jurisdiction." *Red Cross*, 505 U.S. at 252, 112 S.Ct. 2465 (emphasis added). The 1954 amendments, while using the new phrase "court of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause, retained the specific reference to the federal courts. Congress would not have sought to eliminate federal question jurisdiction under Fannie Mae's sue-and-be-sued clause by retaining the very words the Court had recently held sufficient to *confer* such jurisdiction in *D'Oench*. *See Pirelli*, 534 F.3d at 786 ("If Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.' ").

Appendix B

Congress's contemporaneous treatment of the FSLIC shows that it knew a foolproof method to eliminate federal question jurisdiction from a sue-and-be-sued clause. That method was to follow *Deveaux* and simply to omit the reference to federal courts. In 1954, the same year Congress amended Fannie Mae's charter, Congress eliminated federal question jurisdiction for the FSLIC by deleting language in its charter that had authorized suit "in any court of law or equity, State or Federal." Congress replaced it with language authorizing suit "in any court of competent jurisdiction in the United States." *See* H.R.Rep. No. 83–1429, at 90; S.Rep. No. 83–1472, at 121. Since eliminating the reference to federal courts in the FSLIC amendment eliminated federal question jurisdiction over FSLIC suits brought under its sue-and-be-sued clause, Congress had no reason also to insert the phrase "court of competent jurisdiction" to accomplish the same thing. *See Corley v. United States*, 556 U.S. 303, 314, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous...." (internal quotation marks omitted)).

The dissent argues that our holding renders superfluous the phrase "court of competent jurisdiction." Dissent at 19, 28. We disagree. As we explained above, the phrase served the purpose of eliminating an anachronistic reference to courts of law and equity. But if we need an additional purpose for the phrase, it is not hard to find one. In *Osborn*, the purpose of the phrase "in all State Courts having competent jurisdiction" was to emphasize that the clause did not authorize or require the exercise of

subject matter jurisdiction by a state court with narrow, specialized jurisdiction. *See* 22 U.S. (9 Wheat.) at 817. Fannie Mae's sue-and-be-sued clause can easily be read to have the same purpose. There was a general concern in the 1950s about the extent of federal authority to require state courts to hear cases brought pursuant to federal statutes. In *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967 (1947), the World War II-era federal Emergency Price Control Act required state courts to entertain civil suits for treble damages against merchants who charged a retail price exceeding the maximum set by federal law. The Act specified that federal and state courts had concurrent jurisdiction. Like Fannie Mae's charter, the Act authorized suit "in any court of competent jurisdiction." *Id.* at 387 n. 1, 67 S.Ct. 810. Rhode Island district and superior courts refused to hear a suit brought under the Act, contending that they were not obliged to hear a suit under a federal statute authorizing treble damages. *Id.* at 388, 67 S.Ct. 810. After determining that the state district and superior courts were courts "of competent jurisdiction" with "jurisdiction adequate and appropriate under established local law" to grant treble damages, the Court held in *Testa* that such courts were required to hear suits under the Act. *Id.* at 394, 67 S.Ct. 810.

It was in this historical setting that Congress added the phrase "court of competent jurisdiction" to Fannie Mae's charter. Consistent with *Testa*, the phrase requires state courts of general or otherwise competent jurisdiction to hear claims brought by and against Fannie Mae. The phrase makes clear that state courts of specialized

jurisdiction—such as family courts and small-claims courts—need not entertain suits that do not satisfy those courts' jurisdictional requirements. Similarly, the phrase also makes clear that the sue-and-be-sued clause does not require federal courts of specialized jurisdiction—such as bankruptcy courts—to hear suits falling outside those courts' jurisdiction. *Accord Pirelli*, 534 F.3d at 785.

Finally, the dissent points to several circuit court cases decided after 1954 that interpret the phrase "court of competent jurisdiction" the same way the dissent does. Dissent at 692 (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir.1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir.1981); *Bor–Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir.1978); *Lindy v. Lynn*, 501 F.2d 1367, 1368 (3d Cir.1974)). But all of these cases predate *Red Cross*. The only post-*Red Cross* cases cited by the dissent are district court decisions. Dissent at 693 & n. 2.

B. Legislative History

Our dissenting colleague makes two arguments based on legislative history that deserve a focused response. First, the dissent points to the history of the 1954 amendments. The House Bill, which used the phrase "court of competent jurisdiction," was designed to effectuate a transformation of Fannie Mae from a government-owned corporation to a privately owned, but still federally chartered, corporation. The Senate Bill, which retained the old phrase "in any court of law or equity," would not have changed the ownership of Fannie Mae. The House Bill prevailed. The

dissent concludes that the addition of the phrase "court of competent jurisdiction" in the 1954 amendments, taken from the House Bill, was designed to help effectuate the privatizing purpose of the bill.

Second, the dissent points to a 1974 amendment to Fannie Mae's charter. The amendment allowed Fannie Mae to change its principal place of business from the District of Columbia to the Virginia or Maryland suburbs, but specified that Fannie Mae would nonetheless remain a District of Columbia corporation "for purposes of jurisdiction." Housing and Community Development Act of 1974, Pub.L. No. 93–383, § 806(b), 88 Stat. 633, 727 (codified as amended at 12 U.S.C. § 1717(a)(2)). The dissent argues that if the 1954 sue-and-be-sued clause confers federal question jurisdiction, there would have been no need to confer District of Columbia corporate status on Fannie Mae in 1974, and thereby to confer diversity jurisdiction over suits to which Fannie Mae is a party.

1. The 1954 Amendments

The dissent relies heavily on the fact that the 1954 amendments were part of a broad reform reducing the federal government's role in Fannie Mae. The change to Fannie Mae's sue-and-be-sued clause, the dissent argues, must have furthered this "overriding purpose." Dissent at 695.

The dissent is correct that the 1954 amendments sought to minimize the federal government's ownership and operational role in Fannie Mae. But the 1954 amendments

did not completely privatize Fannie Mae, which remained, even after 1954, a federally chartered corporation with specific statutory requirements for its corporate governance. Not every part of the 1954 amendment served Congress's "overriding purpose" of privatization, and there is no reason that the phrase "court of competent jurisdiction" must be understood as serving this purpose, and there is no evidence showing that the change to Fannie Mae's sue-and-be-sued clause was part of the move toward privatization. Whether federal courts have federal question jurisdiction over Fannie Mae cases has nothing to do with "[s]ubstituting private sources of funds for Government expenditures," the primary means by which the House sought to privatize Fannie Mae. H.R.Rep. No. 83–1429, at 2; *see id.* at 695–96. The House Report went into great detail explaining the provisions of the 1954 amendments designed to privatize Fannie Mae. It never once mentioned the change to Fannie Mae's sue-and-be-sued clause.

Even more telling is Congress's simultaneous use of the identical phrase, "court of competent jurisdiction," in contexts that had nothing to do with either Fannie Mae or privatization. In the same Act that amended Fannie Mae's charter, Congress amended the FSLIC's charter by replacing the phrase "court of law and equity" with the phrase "court of competent jurisdiction." Housing Act of 1954 § 501(1). Also in the same Act, Congress added the phrase "court of competent jurisdiction" to the statute governing the Home Loan Bank Board ("HLBB"). Housing Act of 1954 § 503(2). The change to the FSLIC's sue-and-be-sued clause was one of very

few changes to the FSLIC's charter. *See* H.R.Rep. No. 83–1429, at 90–91; S.Rep. No. 83–1472, at 121–22. As we discussed above, Congress did eliminate federal question jurisdiction for the FSLIC, but it did so by eliminating any mention of federal courts. The change to the HLBB's sue-and-be-sued clause was unrelated to privatization. Indeed, with respect to jurisdiction, Congress made clear that it wanted to *increase* the HLBB's access to federal courts. Both the House and Senate explained that they were providing the HLBB the "means ... to enforce the laws and regulations under which Federal savings and loan associations operate." H.R.Rep. No. 83–1429, at 27; S.Rep. No. 83–1472, at 43. The Senate report specifically stated that HLBB "proceedings could be in the Federal judicial district in which the association is located." S.Rep. No. 83–1472, at 43; *see also* H.R.Rep. No. 83–1429, at 27.

As a postscript to the 1954 amendments, in 1968 Congress split Fannie Mae into two corporations, Fannie Mae and the Government National Mortgage Association ("Ginnie Mae"). Housing and Urban Development Act of 1968, Pub.L. No. 90–448, § 801, 82 Stat. 476, 536 (1968) (codified as amended at 12 U.S.C. § 1716b). Both Fannie Mae and Ginnie Mae remained federally chartered, but Fannie Mae became entirely privately owned and Ginnie Mae became entirely federally owned. *See id.* Yet Fannie Mae and Ginnie Mae kept precisely the same sue-and-be-sued clause, authorizing them both "to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a. If the phrase "court of competent jurisdiction" had been used in 1954 as part of an overall plan to privatize Fannie Mae

and to limit its access to federal courts, Congress would not have used that same phrase in Ginnie Mae's charter.

2. The 1974 Amendment

The 1974 amendment to the Housing Act changed the sentence "[Fannie Mae] shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof" to read, "[Fannie Mae] shall maintain its principal office in the District of Columbia *or the metropolitan area thereof* and shall be deemed, *for purposes of jurisdiction* and venue in civil actions, to be a District of Columbia corporation." Housing and Community Development Act of 1974 § 806(b) (emphasis added).

The dissent argues that this change shows that Congress, in light of the elimination of federal question jurisdiction effectuated by the 1954 amendment to Fannie Mae's sue-and-be-sued clause, sought to authorize diversity jurisdiction under 28 U.S.C. § 1332 over suits in which Fannie Mae was a party. If it were clear that the 1974 amendment was intended to confer diversity jurisdiction over Fannie Mae cases, this could suggest that Congress belatedly realized that it had eliminated federal question jurisdiction by its amendment to Fannie Mae's sue-and-be-sued clause, and now sought, twenty years later, to provide some basis for federal subject matter jurisdiction. *See* Dissent at 697–98. But we do not believe that this was the purpose of the 1974 amendment.

Appendix B

The "jurisdiction" to which the 1974 amendment refers is almost certainly not subject matter jurisdiction. The reference is almost certainly to personal jurisdiction. The purpose of the amendment was almost certainly to allow Fannie Mae to move its principal place of business out of the District of Columbia to the Virginia or Maryland suburbs, and at the same time to make clear that Fannie Mae would be subject to general personal jurisdiction only in the District even if it moved its principal place of business into the suburbs.

A corporation, like an individual, is subject to specific jurisdiction in a forum when its activities in that forum have given rise to the suit. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, ---U.S. ----, 131 S.Ct. 2846, 2853, 180 L.Ed.2d 796 (2011). A corporation is subject to general jurisdiction only where it is "essentially at home." *Id.* at 2851; *see Daimler AG v. Bauman*, --- U.S. ----, 134 S.Ct. 746, 755–58, 187 L.Ed.2d 624 (2014). The two places where a corporation is "essentially at home" and therefore subject to general jurisdiction are its place of incorporation and its principal place of business. *Daimler*, 134 S.Ct. at 760. In the 1974 amendment, Congress specified that Fannie Mae would be "deemed" a District of Columbia corporation "for purposes of jurisdiction" and thus subject to general jurisdiction only in the District, despite the possibility that it might move its principal place of business to the suburbs. *See* 12 U.S.C. § 1717(a)(2)(B).

The legislative history of the 1974 amendment is consistent with this reading. The House subcommittee summarized the amendment as "provid[ing] that the principal office of

FNMA be located in the District of Columbia metropolitan area, as well as in the District of Columbia, though for jurisdiction and venue purposes FNMA would be considered a District corporation." Subcomm. on Hous. of the Comm. on Banking and Currency, 93d Cong., Compilation of the Housing and Community Development Act of 1974, at 277 (Comm. Print 1974); *see also id.* at 379 (summarizing the amendment as "permit[ing] the principal office of FNMA to be located in the District of Columbia metropolitan area, as well as in the District of Columbia, though for jurisdiction and venue purposes FNMA is to be considered a District resident"). The legislative history contains no mention of the possibility that the amendment was intended to authorize diversity jurisdiction based on newly conferred District of Columbia citizenship for Fannie Mae. Rather, the legislative history strongly suggests that the amendment was intended to allow Fannie Mae to move its principal place of business to the suburbs without effecting any change to the place where it would be subject to general jurisdiction. That is, Fannie Mae could move to the suburbs, "though for jurisdiction and venue purposes [it] would be considered a District corporation." *Id.* at 277.

The dissent cites two other statutes as examples of Congress creating diversity jurisdiction for federally chartered corporations. Dissent at 697–98. But both statutes support reading the 1974 Fannie Mae amendment as referring to personal rather than subject matter jurisdiction. Both statutes expressly refer to the corporation a "citizen" of the relevant forum. *See* 7 U.S.C. § 941(c) ("The telephone bank ... shall, for the purposes of jurisdiction and venue, be

deemed a *citizen* and resident of the District of Columbia." (emphasis added)); 28 U.S.C. § 1348 ("All national banking associations shall, for the purposes of all other actions by or against them, be deemed *citizens* of the States in which they are respectively located." (emphasis added)). Federal law defines diversity jurisdiction in terms of citizenship, 28 U.S.C. § 1332(a), so when Congress sought to authorize diversity jurisdiction in these two statutes, it used the word "citizen." Unlike these two statutes, Fannie Mae's 1974 amendment does not use the word "citizen." Rather, it provides only that Fannie Mae is a "District of Columbia corporation." 12 U.S.C. § 1717(a)(2)(B).

Conclusion

We hold that the sue-and-be-sued clause in Fannie Mae's federal charter confers federal question jurisdiction over suits in which Fannie Mae is a party. Accordingly, we hold that the district court had subject matter jurisdiction over plaintiffs' claims. We affirm the district court's dismissal of plaintiffs' claims for the reasons stated in our previous unpublished disposition. *Lightfoot*, 465 Fed.Appx. at 669.

AFFIRMED.

STEIN, District Judge, dissenting:

Fannie Mae's charter gives the company the power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). Unlike the corporate charter at issue in *American National Red Cross v. S.G.*, 505 U.S. 247,

112 S.Ct. 2465, 120 L.Ed.2d 201 (1992), Fannie Mae's sue-and-be-sued clause contains a proviso—the phrase "of competent jurisdiction." The majority offers a few potential readings of this phrase, but each of these constructions effectively renders the proviso superfluous. But the phrase "of competent jurisdiction" is not a potted plant; it must mean something. With the proviso included, Fannie Mae's sue-and-be-sued clause does not confer automatic federal subject matter jurisdiction over any action to which Fannie Mae is a party; jurisdiction must arise from some other source. I therefore respectfully dissent.

I. The *Red Cross* Default Rule

Congress has used the sue-and-be-sued clauses of federal corporations to achieve multiple goals. Most obviously, these clauses make clear that the federal entity—as opposed to, for example, its administrator—has the ability to engage in litigation. *See Fed. Hous. Admin. v. Burr*, 309 U.S. 242, 245, 60 S.Ct. 488, 84 L.Ed. 724 (1940). Congress also uses these clauses to confirm that a federally created entity cannot invoke sovereign immunity. *See id.* at 249, 60 S.Ct. 488. And Congress may also draft a sue-and-be-sued clause to confer federal jurisdiction upon any suit to which the federal corporation is a party.

A hoary line of U.S. Supreme Court precedent sets forth how Congress may achieve this final goal. The Court first considered this question in *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 3 L.Ed. 38 (1809), with Chief Justice Marshall writing. The corporation in that case was the first Bank of the United States, and its

charter empowered the Bank "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever." *Id.* at 85. The Court concluded that this section merely granted the Bank the capacity to sue. It did not "enlarge the jurisdiction of any particular court." *Id.*

Two lines of reasoning supported this holding. First, the Court concluded that automatic access to the federal courts did not necessarily follow from a generic authorization to sue and be sued. *See id.* at 85–86. Second, a different section of the Bank's charter explicitly provided for federal jurisdiction in certain suits against the president and directors of the Bank. *See id.* at 86. "This," the Chief Justice announced, "evinces the opinion of congress, that the right to sue does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

Congress seemingly responded to the Court's ruling when it chartered the second Bank of the United States. The relevant section of the second Bank's charter gave it the right "to sue and be [sued], plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, and in any Circuit Court of the United States."[1] *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 817, 6 L.Ed. 204

1. At the time the second Bank was chartered, the circuit courts had both original and appellate jurisdiction over certain civil actions. *See Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247, 256 n. 8, 112 S.Ct. 2465, 120 L.Ed.2d 201 (1992); Richard H. Fallon, Jr. et al., Hart and Wechsler's The Federal Courts and the Federal System 22, 30 n.65 (6th ed.2009).

(1824). The *Osborn* Court, once again through Chief Justice Marshall, determined that unlike the language at issue in *Deveaux*, the second Bank's charter unambiguously conferred federal subject matter jurisdiction. *Id.* at 817–18.

Deveaux and *Osborn* together established a default rule for determining whether a federal corporation's sue-and-be-sued clause confers federal subject matter jurisdiction. As the Supreme Court summarized in *American National Red Cross v. S.G.*, 505 U.S. 247, 112 S.Ct. 2465, 120 L.Ed.2d 201 (1992): "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255, 112 S.Ct. 2465.

The clause at issue in that case gave the Red Cross the power "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Id.* at 248, 112 S.Ct. 2465. This language went beyond the general authorization of *Deveaux*. *See id.* at 256–57, 112 S.Ct. 2465. In addition, the Red Cross's clause was "in all relevant respects identical" to a charter provision that the Court held to confer jurisdiction in *D'Oench, Duhme & Co. v. Federal Deposit Insurance Corp.*, 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956 (1942). *See Red Cross*, 505 U.S. at 257, 112 S.Ct. 2465. Importantly, Congress amended the relevant provision of the Red Cross's charter just five years after *D'Oench* was decided. *See id.* at 260, 112 S.Ct. 2465. The plain language and statutory history together compelled the conclusion that the Red Cross's charter gave federal courts subject matter jurisdiction over suits to which the company was a party.

Appendix B

Red Cross provides the Supreme Court's most recent pronouncement on the jurisdictional implications of federal sue-and-be-sued clauses. However, *Red Cross* did not announce any new rule of law. *See id.* at 255–57, 112 S.Ct. 2465. Rather, the Court simply restated the "rule established" in the Court's twin decisions of *Osborn* and *Deveaux*. *Id.* at 257, 112 S.Ct. 2465. *Red Cross* thus did not announce a magic-words test that ends all inquiry the moment we come across the word "federal"; it restated a default rule to assist Congress and the courts in writing and interpreting sue-and-be-sued clauses.

Recognizing that the rule in *Red Cross* is a default has an important implication—it means that Congress can draft exceptions to the rule. When Congress creates corporations, it "has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary." *Fed. Hous. Admin. v. Burr*, 309 U.S. 242, 249, 60 S.Ct. 488, 84 L.Ed. 724 (1940); *cf. Fed. Sav. & Loan Ins. Corp. v. Ticktin*, 490 U.S. 82, 86–87 & n. 5, 109 S.Ct. 1626, 104 L.Ed.2d 73 (1989) (Congress can write provisos that limit "broad grant[s] of federal jurisdiction."). Counsel for Fannie Mae nicely summarized this point at oral argument: "If Congress says you can sue or be sued in federal court, that is at least a profoundly strong default rule ... and you'd have to find something else in the statute that says even though we want you to sue in federal court, we don't really mean it." Oral Arg. Rec. at 28:58.

Red Cross did not tie Congress' hands, preventing it from crafting sue-and-be-sued clauses as it deems fit. We cannot

ignore the "of competent jurisdiction" proviso; we must determine what it means. The *Red Cross* default rule gives us the starting point for our analysis of Fannie Mae's sue-and-be-sued clause. The Supreme Court's application of the default rule over the past two centuries defines the interpretive tools for our analysis. Using this approach, Fannie Mae's sue-and-be-sued clause allows for only one reading—a court must have an independent basis of jurisdiction to hear a suit involving that company.

II. The Plain Language of Fannie Mae's Sue–And–Be–Sued Clause

As noted, Fannie Mae's charter grants the company the power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). Absent the "of competent jurisdiction" proviso, this clause would clearly confer jurisdiction on the federal courts. *See D'Oench*, 315 U.S. at 455, 62 S.Ct. 676. The true question before this Court, then, is what the proviso means. On its face, the phrase "of competent jurisdiction" "look[s] to outside sources of jurisdictional authority." *Califano v. Sanders*, 430 U.S. 99, 106 n. 6, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). When "of competent jurisdiction" modifies "State" courts, the proviso instructs us to look for a jurisdictional hook in that state's law. *See Osborn*, 22 U.S. (9 Wheat.) at 817. The proviso performs the same function when it modifies "Federal" courts. No court—state or federal—is competent to hear a suit involving Fannie Mae unless it has subject matter jurisdiction by some means other than Fannie Mae's sue-and-be-sued clause.

Congress has utilized substantively identical language in other sue-and-be-sued clauses, and the courts of appeals have overwhelmingly agreed that an "of competent jurisdiction" proviso requires an alternative basis of jurisdiction. Fannie Mae has directed our attention in particular to the sue-and-be-sued provision that authorizes the Administrator of the Federal Housing Administration "to sue and be sued in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1702. A long line of cases has held that this statute does not confer federal jurisdiction. *See C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir.1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir.1981); *Bor–Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir.1978); *Lindy v. Lynn*, 501 F.2d 1367, 1368 (3d Cir.1974). This very Circuit has followed the non-jurisdictional interpretation of the statute, albeit in dicta. *See Munoz v. Small Business Admin.*, 644 F.2d 1361, 1365 n. 3 (9th Cir.1981). The majority criticizes my reliance on these cases because they were handed down prior to *Red Cross*, which, as set forth above, announced no new rule of law. But if the majority seeks post-*Red Cross* cases that agree with this dissent that an independent basis is needed to support federal subject matter jurisdiction for Fannie Mae, we need only look to the numerous district court opinions in this Circuit that the majority overrules with its decision. As district judge Dean Pregerson recently summarized, "courts in this circuit appear to have uniformly reached the [ ] conclusion" that Fannie Mae's charter does not confer federal subject matter jurisdiction. *Fed. Nat'l Mortgage Ass'n v. Moreno*, No. 14–CV–2984, 2014 WL 1922955, at *2

(C.D.Cal. May 14, 2014) (collecting cases). Judge Pregerson concurred with that significant consensus.[2] *See id.*

In sum, when Congress has included "of competent jurisdiction" provisos in sue-and-be-sued clauses, courts have honored Congress' intent and ruled these clauses

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2. The district courts in our circuit are not alone in their consensus that Fannie Mae's sue-and-be-sued clause does not confer federal subject matter jurisdiction. Indeed, this appears to be the position of the majority of those district courts in all circuits that have written on this issue. *See Warren v. Fed. Nat'l Mortg. Ass'n*, No. 14–CV–0784, ——F.Supp.3d ——, 2014 WL 4548638 (N.D.Tex. Sept. 15, 2014); *Kennedy v. Fed. Nat'l Mortg. Ass'n*, No. 13–CV–203, 2014 WL 3905593, at *5–6 (E.D.N.C. Aug. 11, 2014); *Fed. Nat'l Mortg. Ass'n v. Davis*, 963 F.Supp.2d 532, 537–43 (E.D.Va.2013); *Carter v. Watkins*, No. 12–CV–2813, 2013 WL 2139504, at *3–4 (D.Md. May 14, 2013); *Fed. Home Loan Bank of Indianapolis v. Banc of Am. Mortg. Sec., Inc.*, No. 10–CV–1463, 2011 WL 2133539, at *1–2 (S.D.Ind. May 25, 2011) (construing the FHLB's substantively identical sue-and-be-sued clause); *Fed. Home Loan Bank of Atlanta v. Countrywide Sec. Corp.*, No. 11–CV–489, 2011 WL 1598944, at *3 (N.D.Ga. Apr. 22, 2011) (construing FHLB charter); *Fed. Home Loan Bank of Chicago v. Banc of Am. Funding Corp.*, 760 F.Supp.2d 807, 809–10 (N.D.Ill.2011) (construing FHLB charter); *Rincon Del Sol, LLC v. Lloyd's of London*, 709 F.Supp.2d 517, 522–25 (S.D.Tex.2010); *Knuckles v. RBMG, Inc.*, 481 F.Supp.2d 559, 562–65 (S.D.W.Va.2007). Those district courts that have sided with the majority have done so without an extended discussion of this question. *See Fed. Home Loan Bank of Boston v. Ally Fin., Inc.*, No. 11–CV–10952, 2012 WL 769731, at *1–3 (D.Mass. Mar. 9, 2012); *In re Fannie Mae 2008 Sec. Litig.*, No. 08 Civ. 7831, 2009 WL 4067266, at *3 (S.D.N.Y. Nov. 24, 2009); *Grun v. Countrywide Home Loans, Inc.*, No. 03–CV–0141, 2004 WL 1509088, at *2 (W.D.Tex. July 1, 2004).

to not confer subject matter jurisdiction. Fannie Mae's sue-and-be-sued clause should be no different.

The majority offers two alternative readings for the "of competent jurisdiction" proviso. Neither is persuasive. First, the majority suggests that the proviso was part of Congress' drive to modernize the U.S.Code in the mid–20th century. During this period, law and equity were merged in the federal courts and in a majority of the states. *See* Fed.R.Civ.P. 2. The merger largely rendered references to "courts of law and equity" into historical curiosities. As the majority correctly points out, when Congress amended title 28 of the U.S.Code, it cleaned up these references in the sections that confer jurisdiction on the district courts. Congress went about its task expeditiously—it simply deleted references to courts of law or equity.[3] Congress did not replace these phrases with new references to "courts of competent jurisdiction" for a singularly valid reason. As explained above, the phrase "of competent jurisdiction" signals that the section containing that phrase will not also harbor a grant of jurisdiction. It would make no sense to include this proviso in a section designed to confer jurisdiction.

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3. *Compare* 28 U.S.C. § 41(1) (1946), *with* Act of June 25, 1948, ch. 646, §§ 1331, 1332, 1345, 62 Stat. 869, 930, 933 (deleting reference to "suits of a civil nature, at common law or in equity"); *compare* 28 U.S.C. § 41(7), (14) (1946), *with* ch. 646, §§ 1338, 1343, 62 Stat. at 931–32 (deleting references to "suits at law or in equity"); *and compare* 28 U.S.C. § 41(20) (1946), *with* ch. 646, § 1346, 62 Stat. at 933 (deleting reference to "a court of law, equity, or admiralty").

Next, the majority offers that the "of competent jurisdiction" proviso could be read to emphasize that state and federal courts of specialized jurisdiction need not hear cases involving Fannie Mae purely on the basis of its sue-and-be-sued clause. There are two flies in the ointment of this reading.

First, the majority relies on the *Osborn* Court's interpretation of the second Bank's charter, which authorized the Bank to sue "in all State Courts having competent jurisdiction." *Osborn*, 22 U.S. (9 Wheat.) at 817. According to the majority, this phrase ensured that "a state court with narrow, specialized jurisdiction" was not required to hear any case involving the Bank. Majority Op. at 686. This is an unduly narrow reading of the clause. In fact, the second Bank's charter made clear that *no* state court was required to hear a suit involving the Bank, unless that court had a free-standing basis for jurisdiction. This reading accords with the understood relationship between Congress and the state courts around the time the second Bank was chartered: "I hold it to be perfectly clear, that Congress *cannot confer jurisdiction* upon any Courts, but such as exist under the constitution and laws of the United States, although the State Courts may exercise jurisdiction on cases authorized by the laws of the State, and not prohibited by the exclusive jurisdiction of the federal Courts." *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 27–28, 5 L.Ed. 19 (1820) (emphasis added). The "of competent jurisdiction" proviso serves precisely the same purpose in Fannie Mae's charter—the only difference is that the proviso applies to the courts of the states and the federal government.

Second, *Red Cross* forecloses the majority's construction of the "of competent jurisdiction" proviso. The Red Cross's charter gave that organization the power "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Red Cross*, 505 U.S. at 248, 112 S.Ct. 2465. In his dissenting opinion, Justice Scalia argued that if this sue-and-be-sued clause must confer federal jurisdiction, it must confer jurisdiction on *all* the federal courts, including those of specialized jurisdiction. *See id.* at 267, 112 S.Ct. 2465 (Scalia, J., dissenting). The Court rejected this approach and held that the Red Cross's charter confers automatic jurisdiction only in the district courts—today, the sole federal courts of broad original jurisdiction. *See id.* at 256 n. 8, 112 S.Ct. 2465 (majority opinion). *Red Cross* therefore demonstrates that Congress does not need an "of competent jurisdiction" proviso to ensure that Fannie Mae will not foist itself upon federal courts of specialized jurisdiction. The majority's reading of the proviso would render it entirely superfluous.

The majority claims that *Testa v. Katt*, 330 U.S. 386, 67 S.Ct. 810, 91 L.Ed. 967 (1947), provides an historical backdrop for its interpretation of the sue-and-be-sued clause. This is an interesting hypothetical, but one without relevance to the issue presented in this case. *Testa* restated the uncontroversial proposition that state courts cannot refuse to hear federal causes of action when those courts entertain similar state law causes of action. *See id.* at 394, 67 S.Ct. 810; *see also, e.g., Haywood v. Drown*, 556 U.S. 729, 735–36, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009). But Congress did not give Fannie Mae a proprietary

cause of action when it amended the company's charter in 1954. When Fannie Mae sues or is sued, the cause of action must derive from a separate realm of federal law or, more likely, from state law. *See, e.g., Welch v. Burton*, 221 Ark. 173, 252 S.W.2d 411, 413 (1952) (Fannie Mae joined as defendant in quiet title action); *Malcolm MacDowell & Assocs. v. Ecorse–Lincoln Park Bank*, 325 Mich. 591, 38 N.W.2d 921, 921–22 (1949) (Fannie Mae sued for breach of a mortgage-related contract). *Testa* does not evidence a midcentury climate of fear that federal *entities* would be denied access to state courts, especially in cases touching on state property and mortgage law.

The Red Cross default rule does not allow us to ignore the "of competent jurisdiction" proviso—it must mean something. The only natural reading of this phrase instructs us to look for a source of jurisdiction outside of Fannie Mae's sue-and-be-sued clause.

III. The Legislative Context of Fannie Mae's Sue–And–Be–Sued Clause

Looking beyond the plain language of Fannie Mae's sue-and-be-sued clause, the history of Congress' amendments to this statute reinforces the conclusion that the clause does not confer federal subject matter jurisdiction.

A. The 1954 amendment

Prior to 1954, Fannie Mae's sue-and-be-sued clause gave it the power "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal."

Appendix B

Nat'l Housing Act, ch. 847, § 301(c)(3), 48 Stat. 1246, 1253 (1934). This clause inarguably gave Fannie Mae access to the federal courts. *See D'Oench*, 315 U.S. at 455, 62 S.Ct. 676. But knowing this, Congress in 1954 struck the language "in any court of law or equity," and replaced it with "in any court of competent jurisdiction." It is a basic tenet of statutory interpretation that "[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S.Ct. 1537, 131 L.Ed.2d 465 (1995). Indeed, the Supreme Court in *Red Cross* reinforced the importance of this canon in the context of sue-and-be-sued clauses. *See Red Cross*, 505 U.S. at 260, 112 S.Ct. 2465. Congress thus emphasized the non-jurisdictional implications of the "of competent jurisdiction" proviso by adding it to a previously jurisdiction-conferring statute.

Congress' motivation and method in amending Fannie Mae's charter have proved obscure to some. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 786–87 (D.C.Cir.2008). It is true that the legislative history behind the 1954 amendment does not expressly discuss the addition of the "of competent jurisdiction" proviso. But the legislative history does reveal that Congress intended to reduce the footprint of the federal government in the national housing market. Congress' amendment to Fannie Mae's sue-and-be-sued clause was simply one facet of this overriding purpose.

The 1954 Act was prompted by President Eisenhower's desire to "develop a new and revitalized housing program

better adapted to current requirements, which would clearly identify the proper role of the Federal Government in the housing field and outline more economical and effective means for improving the housing conditions of our people." H.R.Rep. No. 83–1429, at 1 (1954). As the House Committee on Banking and Currency put it, one of the Act's "basic objectives" was "[s]ubstituting private sources of funds for Government expenditures whenever possible, especially in connection with the provision of a secondary market for home mortgages." *Id.* at 2.

The House passed H.R. 7839—a version of the 1954 Act that would dramatically remake Fannie Mae. Pursuant to H.R. 7839, Fannie Mae would be dissolved and rechartered "with substantial changes in its authority and with provision for the eventual substitution of private capital for Government investment in its secondary market operations." H.R.Rep. No. 83–1429, at 18. The new Fannie Mae would issue capital stock to the Secretary of the Treasury and convertible bonds to private investors. *See id.* at 18–19. Once the capital stock owned by the Secretary was retired, the convertible bonds could be exchanged for common stock and Fannie Mae could issue more common stock directly to the public. *See id.* at 18–19, 43–45. Notably for our purposes, the House bill included the "of competent jurisdiction" proviso in Fannie Mae's amended corporate charter. *See id.* at 89–90.

The Senate Committee on Banking and Currency strongly disagreed with the House's treatment of Fannie Mae. That Committee did not believe that "the testimony and facts presented to it warrant[ed] the sweeping action

contained in" the House bill. S.Rep. No. 83–1472, at 33 (1954), 1954 U.S.C.C.A.N. 2723. The Senate proposed only minor changes to Fannie Mae's then-existing corporate authority. *See id.* at 74–75. Importantly, the Senate version of H.R. 7839 did not include the "of competent jurisdiction" proviso. *See id.* at 121.

The conference committee roundly rejected the Senate's approach and adopted the House's version of the Act. *See* Conf. Rep. No. 83–2271, at 25–35 (1954). The final version of the law included the Treasury-to-private capitalization path. *See* Housing Act of 1954, Pub.L. No. 83–560, § 201, 68 Stat. 590, 613–15. It also provided that once this capital conversion was complete, Fannie Mae's administrative parent would request that Congress turn Fannie Mae over entirely to its private owners. *See id.*, 68 Stat. at 615. It also included, as we know, the "of competent jurisdiction" proviso.[4] *See id.* at 620.

In sum, the non-jurisdictional reading of the 1954 sue-and-be-sued clause meshes comfortably with Congress' overall intention when enacting the Housing Act of 1954. Congress intended to put Fannie Mae on a path that

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4. The 1954 Act inserted an "of competent jurisdiction" proviso into the sue-and-be-sued clauses of two other entities—the Federal Savings and Loan Insurance Corporation and the Home Loan Bank Board (in the context of Board actions to enforce its regulations of savings and loan institutions). *See* Pub.L. No. 83–560, §§ 501(1), 503(2), 68 Stat. at 633, 635. Congress made the interpretive task concerning these two clauses easier, since it did not include a specific reference to federal courts. Neither of these sue-and-be-sued clauses confers automatic federal jurisdiction.

would eventually take the federal government out of the secondary mortgage market. As part of this process, Congress removed Fannie Mae's jurisdiction-granting sue-and-be-sued clause and elected the default option for federally chartered corporations—that they do not automatically gain access to the federal courts, unless the government owns more than half of the corporation's capital stock.[5] After Congress passed the 1954 Act, Fannie Mae would still have access to the federal courts purely on the basis of its federal charter until the Treasury disentangled itself from the corporation. At that point, the government would no longer own more than half of the corporation's capital stock, Fannie Mae's administrator would request that the company be completely turned over to its private owners, and Fannie Mae would be in the position of every other federally chartered corporation that does not receive the special treatment of a jurisdiction-conferring sueand-be-sued clause. *See* Paul E. Lund, *Federally Chartered Corporations and Federal Jurisdiction*, 36 Fla. St. U.L.Rev. 317, 334–35 (2009) (calling the number of corporations with automatic

5. As a consequence of the Supreme Court's decision in *Osborn*, "a suit by or against a corporation of the United States is a suit arising under the laws of the United States." *Pac. R.R. Removal Cases*, 115 U.S. 1, 11, 5 S.Ct. 1113, 29 L.Ed. 319 (1885) (citing *Osborn*, 22 U.S. (9 Wheat.) at 817–28). The district courts thus have jurisdiction over suits by or against federally chartered corporations under 28 U.S.C. § 1331, at least in theory. *See id.* at 14, 5 S.Ct. 1113; *see also Red Cross*, 505 U.S. at 251, 112 S.Ct. 2465. In 1925, Congress limited this ground of jurisdiction so that only corporations where the government owns more than half of the capital stock could benefit from it. *See* Act of Feb. 13, 1925, ch. 229, § 12, 43 Stat. 936, 941 (codified as amended at 28 U.S.C. § 1349).

access to federal courts through their sue-and-be-sued clauses "a select group" and a "handful").

Although Congress did not speak specifically to its intent in amending Fannie Mae's sue-and-be-sued clause, it did not have to. Congress' intent for the Housing Act of 1954—to place the government and Fannie Mae on paths that would ultimately diverge—was clear. The amendment to Fannie Mae's sue-and-be-sued clause was part and parcel of this overarching intendment.

B. The 1974 amendment

Congress returned to Fannie Mae's corporate charter in 1974 to once again amend the company's ability to gain access to the federal courts. This amendment did not touch on the sue-and-be-sued clause, but it affects our interpretation of that portion of Fannie Mae's charter. If a separate portion of Fannie Mae's charter explicitly speaks to jurisdiction, this militates against a jurisdictional reading of the sue-and-be-sued clause. *See Deveaux*, 9 U.S. (5 Cranch) at 86.

Prior to 1974, both Fannie Mae and its sister corporation, Ginnie Mae (formally titled the Government National Mortgage Corporation), were required to "maintain [their] principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof." Housing and Urban Development Act of 1968, Pub.L. No. 90–448, § 802(c)(3), 82 Stat. 476, 536, 537. Then, in the Housing and Community Development Act of 1974, Congress amended this clause to provide

that Fannie Mae "shall be deemed, for purposes of *jurisdiction* and venue in civil actions, to be a District of Columbia corporation." Pub.L. No. 93–383, tit. VIII, § 806(b), 88 Stat. 633, 727 (codified at 12 U.S.C. § 1717(a)(2)(B)) (emphasis added). Congress did not make a parallel amendment to the corporate charter of Ginnie Mae, which had no capital stock and was "in the Department of Housing and Urban Development." 12 U.S.C. § 1717(a)(2)(A).

By adding the term "jurisdiction," Congress intended to allow Fannie Mae to access the federal courts via diversity jurisdiction pursuant to 28 U.S.C. § 1332. Section 1332 deems a corporation a citizen "of every State ... by which it has been incorporated and of the State ... where it has its principal place of business." 28 U.S.C. § 1332(c)(1). But federally chartered corporations are not "citizens" of any "State" for the purposes of section 1332. *See Wachovia Bank v. Schmidt*, 546 U.S. 303, 306, 126 S.Ct. 941, 163 L.Ed.2d 797 (2006); *Bankers' Trust Co. v. Tex. & P. Ry. Co.*, 241 U.S. 295, 309–10, 36 S.Ct. 569, 60 L.Ed. 1010 (1916); *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 & n. 4 (9th Cir.1974). Recognizing this fact, Congress has filled the statutory gap on a few occasions by deeming specific corporations or classes of corporations to be citizens of the states in which they are located. *See* Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 552, 554 (codified as amended at 28 U.S.C. § 1348) ("[A]ll national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them ... be deemed citizens of the States in which they are respectively located ...."); *see also* 7 U.S.C.

§ 941(c) ("The telephone bank ... shall, for the purposes of jurisdiction and venue, be deemed a citizen and resident of the District of Columbia."). The 1974 amendment to Fannie Mae's charter is another example of this type of statute.

Fannie Mae would have no use for diversity jurisdiction if it could enter the federal courts pursuant to its sue-and-be-sued clause. The latter basis of jurisdiction does not contain an amount-in-controversy requirement, a complete-diversity requirement, or a forum-defendant rule. It is also not limited by the well-pleaded complaint rule. *See Red Cross*, 505 U.S. at 258, 112 S.Ct. 2465. If Fannie Mae's sue-and-be-sued clause confers subject matter jurisdiction, then Congress amended the company's charter in 1974 for no reason whatsoever. *See Hancock*, 492 F.2d at 1328–29. The absence of any change to Ginnie Mae's charter confirms this interpretation of the Fannie Mae amendment. Ginnie Mae had no use for diversity jurisdiction whatsoever—it had plenary access to the federal courts as an agency of the federal government. *See* 28 U.S.C. §§ 1345, 1346.

The majority believes that the word "jurisdiction" in the 1974 amendment refers only to personal jurisdiction, not subject matter jurisdiction. A natural reading of the statute does not lead to this result. When Congress dubbed Fannie Mae "a District of Columbia corporation," it employed a phrase with a universally understood meaning. Just as "a Delaware corporation" is an entity incorporated under the laws of that state, *see, e.g.*, *Eldridge v. Richfield Oil Corp.*, 364 F.2d 909, 909 (9th Cir.1966), "a District of Columbia corporation" is one

that has been incorporated under the laws of the District. Section 1332 fills in the rest, making that District of Columbia corporation a District citizen, and therefore eligible for diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1), (e). Congress' designation of the District as the effective place of Fannie Mae's incorporation also makes Fannie Mae subject to general jurisdiction—that is, personal jurisdiction—in the District's courts. *See Daimler AG v. Bauman*, --- U.S. ----, 134 S.Ct. 746, 760, 187 L.Ed.2d 624 (2014). But the 1974 amendment cannot be cabined so that it legislates personal jurisdiction, and personal jurisdiction alone.

The plain language of the 1974 amendment shows that Congress intended to give Fannie Mae access to the federal courts by diversity jurisdiction. Since we cannot presume that Congress amends statutes with frivolous intent, it follows that Fannie Mae must have needed this jurisdictional hook. Congress' pronouncement confirms that Fannie Mae's sue-and-be-sued clause does not confer federal jurisdiction.

IV. Conclusion

The Supreme Court's cases interpreting sue-and-be-sued clauses, culminating with *Red Cross*, have defined the tool box we are to use in examining Fannie Mae's charter. All of the interpretive techniques point in a single direction—that the "of competent jurisdiction" proviso added to Fannie Mae's charter demands that the company come up with some point of entry to the federal courts other than its status as a federally chartered corporation. I respectfully dissent.

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED OCTOBER 21, 2009

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 02-6568 CBM (AJWx)

CRYSTAL MONIQUE LIGHTFOOT, *et al.*,

Plaintiffs,

v.

CENDANT MORTGAGE CORPORATION
dba PHH MORTGAGE, *et al.*,

Defendants.

JUDGMENT

In accordance with Federal Rule of Civil Procedure 58 and consistent with the Court's "Order Granting Defendants Cendant Mortgage Corporation, Fannie Mae and Matthews' Motions to Dismiss; And Request for Judicial Notice" [Doc. No. 59], IT IS ORDERED AND ADJUDGED that judgment be entered in favor of Defendants Cendant Mortgage Corporation, Fannie Mae, and Robert O. Matthews.

IT IS SO ORDERED.

Appendix C

DATED: October 21, 2009

BY /s/_____
CONSUELO B. MARSHALL
UNITED STATES
DISTRICT JUDGE

APPENDIX D — CIVIL MINUTES OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, DATED SEPTEMBER 5, 2002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 02-6568-RSWL

Date: September 5, 2002

Title: CRYSTAL MONIQUE LIGHTFOOT, *et al.* v. CENDANT MORTGAGE, *et al.*

PRESENT: THE HONORABLE RONALD S. W. LEW, U.S. DISTRICT JUDGE

Jovita P. Ilagan	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS FOR PLAINTIFFS:
Not Present

ATTORNEYS FOR DEFENDANTS:
Not Present

PROCEEDINGS: (In Chambers)

Appendix D

The Court has read and considered the plaintiffs' ex parte application to remand case back to Superior Court (the "application"), the opposition of Fannie Mae to the application and the plaintiffs' response to the defendant's opposition. The application is hereby denied.

IT IS SO ORDERED.

APPENDIX E — FANNIE MAE'S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, FILED AUGUST 22, 2002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 02-6568

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs,

vs.

CENDANT MORTGAGE CORPORATION DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS: (A. MARRIED MAN), ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants.

NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1441 and 1446, Fannie Mae, a congressionally chartered federal instrumentality of the United States, hereby removes the case of Lightfoot, et al. v. Cendant Mortgage Corporation, etc., et al., Case No. LC061596, pending in

the Superior Court of California, County of Los Angeles, Northwest Judicial District, to the United States District Court for the Central District of California; and in support thereof states as follows:

1. Fannie Mae is a defendant in the action styled Lightfoot, et al. v. Cendant Mortgage Corporation, etc., et al., Case No. LC061596, pending in the Superior Court of California, County of Los Angeles, Northwest Judicial District. Fannie Mae is a congressionally chartered federal corporation which was established to carry out vital public policies prescribed by statute including creating a secondary market for residential mortgage financing, stimulating the flow of private capital into housing, and improving the affordability of home ownership. *See* 12 U.S.C. §1716.

2. Fannie Mae was first served with the summons and complaint on July 24, 2002. A copy of the summons and complaint are attached hereto as Exhibit A

3. The time within which Fannie Mae is required by laws of the United States, 28 U.S.C. §1446(b), to file this notice of removal has not yet expired.

4. As set out in paragraph 6 below, this Court has subject matter jurisdiction over this action because Congress conferred party-based federal jurisdiction in Fannie Mae's federal charter.

5. Defendant, Cendant Mortgage Corporation, consents to removal, and joins in this Notice of Removal.

To the best of Fannie Mae's knowledge, the other defendants in the action have not been served and have not entered an appearance in the state court action.

Federal Jurisdiction Conferred by Fannie Mae's Charter

6. Federal subject matter jurisdiction exists in this action by virtue of 12 U.S.C. §1723a, a provision of the Fannie Mae Charter Act that grants Fannie Mae authority "to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." *See American National Red Cross v. S.G. & A.E.*, 505 U.S. 247, 248 (1992) (holding "sue and be sued" provision in charter act of 505 U.S. 247, 248 (1992) (holding "sue and be sued" provision in charter act of federally chartered corporation that expressly mentions federal courts to confer original federal jurisdiction over all cases to which the federally chartered corporation is a party with the consequence that the organization is hereby authorized the removal from state to federal court of any state-law action it is defending.").

7. Fannie Mae reserves the right to submit evidence supporting this Notice of Removal should Plaintiffs move to remand.

8. By virtue of this removal petition, Fannie Mae does not waive its right to assert any claims or other motions, including Rule 12 motions permitted by the Federal Rules of Civil Procedure.

9. Fannie Mae desires to remove this action to this Court and submits this Notice of Removal in accordance with 28 U.S.C. §1446(a) along with the exhibits hereto.

10. This Notice of Removal is being filed within thirty (30) days after receipt by Fannie Mae, by service or otherwise, of a copy of the initial pleading setting forth the claims for relief in this action and is, therefore, timely filed pursuant to 28 U.S.C. §1446(b).

11. Pursuant to 28 U.S.C. §1446(d), Fannie Mae shall give written notice of the filing of this notice of removal to all adverse parties and a copy of this notice is also being filed with the Clerk of the State Court in which this case was originally filed.

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12. Fannie Mae accordingly prays that this Court take jurisdiction of this action to its conclusion and to final judgment to the exclusion of any further proceedings in the State court in accordance with law.

Appendix E

DATED: August 20, 2002

Respectfully submitted,

SEVERSON & WERSON
A Professional Corporation

By: s/_____
Suzanne M. Hankins

Attorneys for Defendant
FANNIE MAE

APPENDIX F — 12 U.S.C.A. § 1717

§ 1717. Federal National Mortgage Association and Government National Mortgage Association

(a) Creation; succession; principal and other offices

(1) There is created a body corporate to be known as the "Federal National Mortgage Association", which shall be in the Department of Housing and Urban Development. The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(2) On September 1, 1968, the body corporate described in the foregoing paragraph shall cease to exist in that form and is hereby partitioned into two separate and distinct bodies corporate, each of which shall have continuity and corporate succession as a separated portion of the previously existing body corporate, as follows:

(A) One of such separated portions shall be a body corporate without capital stock to be known as Government National Mortgage Association (hereinafter referred to as the "Association"), which shall be in the Department of Housing and Urban Development and which shall retain the assets and liabilities acquired and incurred under sections 1720 and 1721 of this title prior to such date, including any and all liabilities incurred pursuant to subsection (c)

of this section. The Association shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof. Agencies or offices may be established by the Association in such other place or places as it may deem necessary or appropriate in the conduct of its business.

(B) The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation"), which shall retain the assets and liabilities acquired and incurred under sections 1718 and 1719 of this title prior to such date. The corporation shall have succession until dissolved by Act of Congress. It shall maintain its principal office in the District of Columbia or the metropolitan area thereof and shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation.

(3) The partition transaction effected pursuant to the foregoing paragraph constitutes a reorganization within the meaning of section 368(a)(1)(E) of Title 26; and for the purposes of such Title 26, no gain or loss is recognized by the previously existing body corporate by reason of the partition, and the basis and holding period of the assets of the corporation immediately following such partition are the same as the basis and holding period of such assets immediately prior to such partition.

APPENDIX G — 12 U.S.C.A. § 1723a

§ 1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association

Effective: July 30, 2008

(a) Seal, and other matters incident to operation

Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize,

renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP. D/B/A PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS AND ATTORNEYS EQUITY NATIONAL CORP.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

ANDREW H. FRIEDMAN
Counsel of Record
GREGORY D. HELMER
ANDREA K. LOVELESS
HELMER FRIEDMAN, LLP
8522 National Boulevard, Suite 107
Culver City, California 90232
(310) 396-7714
afriedman@helmerfriedman.com

Attorneys for Petitioners

258275

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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APPENDIX A — JUDGMENT OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL LIGHTFOOT, *ET AL.*,

Plaintiffs,

v.

CENDANT MORTGAGE, *ET AL.*,

Defendants.

No. CV 02-6568 CBM (AJWx)

JUDGMENT

In accordance with Federal Rule of Civil Procedure 58 and *Whitaker v. Garcetti*, 486 F.3d 572, 579 (9th Cir. 2007) (requiring that a judgment must be set forth on a separate document), and consistent with the Court's Order Dismissing the Action With Prejudice Against Defendant Attorneys Equity National Corporation, [Doc. No. 103.], **IT IS ORDERED AND ADJUDGED** that judgment be entered in favor of Defendant Attorneys Equity National Corporation.

IT IS SO ORDERED.

DATED: June 11, 2010

By /s/
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 11, 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL LIGHTFOOT, *ET AL.*,

Plaintiffs,

v.

CENDANT MORTGAGE, *ET AL.*,

Defendants.

No. CV 02-6568 CBM (AJWx)

ORDER DISMISSING THE ACTION WITH PREJUDICE AGAINST DEFENDANT ATTORNEYS EQUITY NATIONAL CORPORATION

The Court, on its own motion, dismisses the action with prejudice against Defendant Attorneys Equity National Corporation ("Attorneys Equity") based on the doctrine of *res judicata*.

FACTUAL AND PROCEDURAL BACKGROUND

I. FACTUAL BACKGROUND

The dispute arises out of the foreclosure and subsequent sale of real property located at 7106 McLaren

Ave., West Hills, CA 91307 (the "Property"), which was previously owned by Plaintiffs Beverly Ann Hollis-Arrington ("Hollis-Arrington") and Crystal Monique Lightfoot ("Lightfoot"). Hollis-Arrington refinanced the loan on the Property through Defendant Cendant Mortgage Corporation ("Cendant") in August 1999. (Verified Complaint ("Compl.") at ¶ 9.) Defendant Federal National Mortgage Association ("Fannie Mae") purchased the loan on the Property from Cendant. (*Id.* at ¶¶ 10-11.) Hollis-Arrington defaulted on her first payment and failed to make any subsequent payments on the Property. (*Id.* at ¶¶ 11-12.) In January 2000, after three months of nonpayment, Hollis-Arrington submitted an application for forbearance to Cendant. (*Id.* at ¶ 12.) No forbearance was granted, and the Property entered foreclosure.[1] (*Id.* at ¶ 16.) On or about April 24, 2000, Attorneys Equity became the trustee for the Property. (*Id.* at ¶ 14.) In August 2000, Cendant repurchased the loan from Fannie Mae because it failed to meet Fannie Mae's credit standards. [*See* Doc. No. 79.] At some point prior to September 14, 2000, Hollis-Arrington transferred the Property to her daughter, Lightfoot, by quitclaim deed. (Compl. at ¶ 18.) The Property was ultimately sold at a trustee's sale. (*Id.* at ¶ 30.)

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1. Hollis-Arrington alleges that she was promised, then denied, a forbearance. (*Id.* at ¶¶ 15-16.)

II. PROCEDURAL HISTORY OF RELATED ACTIONS

a. *Hollis-Arrington v. Cendant Mortgage Corp. et al.*, CV 00-11125 CBM (AJWx) ("first action")

On October 18, 2000, Hollis-Arrington filed a complaint in this Court against Cendant and United Guaranty Residential Insurance Company ("United Guaranty"), alleging four causes of action: (1) breach of the covenant of good faith and fair dealing; (2) fraud and deceit; (3) negligence; and (4) intentional infliction of emotional distress. [CV 00-11125, Doc. No. 1.]

On January 5, 2001, Hollis-Arrington applied for a temporary restraining order to prevent the sale of the Property. [CV 00-11125, Doc. No. 21.] On January 10, 2001, the Court scheduled a hearing on the matter for January 29, 2001, and also ordered that the non-judicial foreclosure sale of the Property be postponed by Cendant until February 6, 2001. [CV 00-11125, Doc. No. 25.] On February 1, 2001, after a hearing on the matter, the Court denied Hollis-Arrington's Application for a Temporary Restraining Order.[2] [CV 00-11125, Doc. Nos. 43-44.] On May 31, 2001, the Ninth Circuit dismissed Hollis-Arrington's appeal of the Court's order. [CV 00-11125, Doc. No. 59.]

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2. The Court also set aside defaults previously entered by the Clerk of Court against Cendant and United Guaranty. [CV 00-11125, Doc. No. 44.]

Appendix B

During the pendency of the first action, Plaintiffs filed bankruptcy petitions. [*See* CV 00-11125, Doc. No. 58.] The action was thereafter subject to an automatic stay and removed from the Court's active calendar on May 23, 2001. [CV 00-11125, Doc. No. 58.] On July 31, 2001, the Court, by stipulation and order, dismissed the action with prejudice as against United Guaranty. [CV 00-11125, Doc. No. 62.] On October 5, 2001, the case was restored to the Court's active calendar. [CV 00-11125, Doc. No. 73.]

On July 15, 2002, the Court granted Cendant's Motion for Summary Judgment, and judgment was entered forthwith in Cendant's favor. [CV 00-11125, Doc. Nos. 102-03.] The Ninth Circuit affirmed the Court's order on May 16, 2003. [CV 00-11125, Doc. No. 120.] On August 29, 2003, the Court denied Plaintiffs' Motion to Set Aside the Judgment. [CV 00-11125, Doc. No. 127.] The Ninth Circuit dismissed Hollis-Arrington's appeal of the Court's order for failure to prosecute.

b. ***Hollis-Arrington v. Cendant Mortgage Corp. et al.*, CV 01-5658 CBM (AJWx) ("second action")**

On June 27, 2001, Hollis-Arrington filed the second action against Cendant, Fannie Mae, and First American Title Company ("First American"), which also related to the foreclosure and sale of the Property. [CV 01-5658, Doc. No. 1.] On July 3, 2001, she filed a First Amended Complaint. [CV 01-5658, Doc. No. 5.]

On July 27, 2001, default was entered against Cendant by the Clerk of Court. [CV 01-5658, Doc. No. 13.] On

August 6, 2001, the Court vacated and set aside the default against Cendant because the default was filed in error. [CV 01-5658, Doc. No. 23.] Ten days later, on August 16, 2001, the Court, by stipulation and order, dismissed the action with prejudice as against First American. [CV 01-5658, Doc. No. 33.]

On September 11, 2001, Hollis-Arrington filed an *Ex Parte* Application for a Temporary Restraining Order to prevent third-party purchasers from evicting her from the Property pending the Court's determination of her Motion to Vacate or Set Aside the Foreclosure Sale, and a stay pending appeal. [CV 01-5658, Doc. No. 45.] On November 29, 2001, the Ninth Circuit affirmed the Court's September 14, 2001 order denying Hollis-Arrington's *Ex Parte* Application. [CV 01-5658, Doc. Nos. 47, 61.]

On December 4, 2001, the Court granted the third-party purchasers' request for leave to intervene to expunge the lis pendens on their title to the Property. [CV 01-5658, Doc. No. 65.] Thereafter, on February 12, 2002, the Court denied Hollis-Arrington's Motion to Set Aside the Foreclosure Sale, granted in part Fannie Mae's Motion to Dismiss with Prejudice, granted the third-party purchasers' Motion to Expunge the lis pendens on their title to the Property, and granted Hollis-Arrington leave to file an amended complaint. [CV 01-5658, Doc. No. 105.]

On March 12, 2002, Hollis-Arrington filed a Second Amended Verified Complaint against Cendant, Fannie Mae, and Attorneys Equity alleging thirteen causes of action: (1) Racketeer Influenced and Corrupt Organizations Act

("RICO") violations; (2) Truth in Lending Act ("TILA") violations; (3) enforcement of rescission on the Property; (4) violation of the Real Estate Settlement Procedures Act ("RESPA"); (5) conspiracy to violate right to due process; (6) violation of right to due process pursuant to 42 U.S.C. § 1983; (7) fraud and deceit; (8) negligent misrepresentation; (9) civil conspiracy; (10) intentional infliction of emotional distress; (11) violation of foreclosure procedure pursuant to state law; (12) quiet title; and (13) slander of title. [CV 01-5658, Doc. No. 109.]

On February 12, 2002, the Court granted Fannie Mae's Motion to Dismiss Plaintiff's RESPA claim with prejudice. [CV 01-5658, Doc. No. 105.] On March 15, 2002, Fannie Mae and Cendant separately filed Motions to Dismiss the second action. [CV 01-5658, Doc. No. 110-11.] On May 28, 2002, the Court granted with prejudice Fannie Mae and Cendant's Motions to Dismiss Hollis-Arrington's RICO, TILA, and Section 1983 claims but reserved ruling on the state law claims pending responses to a Court-issued Order to Show Cause.[3] [CV 01-5658, Doc. No. 131.] On July 1, 2002, after having reviewed and received the parties' responses to the Court's Order to Show Cause, the Court dismissed with prejudice all remaining state claims against all defendants, as a matter of law or for failure to state a claim. [CV 01-5658, Doc. Nos. 135-36.] Judgment was entered in favor of Cendant, Fannie Mae, and non-appearing Attorneys Equity as to all of Hollis-Arrington' s claims. [CV 01-5658, Doc. No. 136.] On April

3. Plaintiff withdrew her RESPA claim as to all remaining defendants. [CV 01-5658, Doc. No. 131.]

17, 2003, the Ninth Circuit affirmed the judgment of the Court. [CV 01-5658, Doc. No. 152.]

On August 29, 2003, the Court denied Hollis-Arrington's Motion to Set Aside the Judgment. [CV 01-5658, Doc. No. 162.] The Ninth Circuit subsequently denied Hollis-Arrington's petition because the case did not warrant intervention by the Ninth Circuit. [CV 01-5658, Doc. No. 166.]

c. The Instant Action

On July 18, 2002, Plaintiffs filed the instant action in the Los Angeles Superior Court against Cendant, Fannie Mae, Robert A. Matthews ("Matthews"), and Attorneys Equity, alleging the following: (1) wrongful foreclosure; (2) the trustee's sale should be voided; (3) fraud and deceit; (4) racial discrimination in violation of the Unruh Act; (5) violation of California state law due to fraud, quiet title, and adverse possession; (6) slander of title; (7) negligent misrepresentation; (8) civil conspiracy; (9) intentional infliction of emotional distress; and (10) adverse possession. Plaintiffs also sought declaratory relief.

Fannie Mae petitioned to remove the case to the federal district court on August 22, 2002. [Doc. No. 1.] Cendant, Attorneys Equity, and Defendant Robert Matthews separately joined in the notice of removal of the action on August 23, 2002. [Doc. Nos. 3-4, 6.] Plaintiffs' *Ex Parte* Application to remand the case back to the Los Angeles Superior Court was denied by the Honorable Ronald S.W. Lew on September 5, 2002. [Doc. No. 18.]

On September 13, 2002, Plaintiffs filed a Notice of Appeal from the Court's Order. [Doc. No. 30.] The Ninth Circuit granted Plaintiffs' Motion for Voluntary Dismissal on October 31, 2002. [Doc. No. 49.]

i. Disposition with Respect to Fannie Mae, Cendant, and Matthews

On August 27, 2002, Fannie Mae and Cendant filed a Motion to Dismiss the instant action. [Doc. No. 12.] The following day, on August 28, 2002, Matthews filed a Motion to Dismiss. [Doc. No. 10.] On September 12, 2002, the Court granted Fannie Mae's and Cendant's Motion for Temporary Protection Order and for Order Staying Discovery pending the Court's disposition of the pending Motions to Dismiss. [Doc. No. 26.] On February 20, 2003, the Court granted Cendant's and Fannie Mae's Motion to Dismiss based on the doctrine of *res judicata* because the two earlier actions involved the same claim, the same parties or parties in privity with previous parties, and final judgments on the merits were entered in those actions.[4] [Doc. No. 59.] On April 11, 2003, the Ninth Circuit dismissed the appeal for lack of jurisdiction. [Doc. No. 67.] The Court denied Plaintiffs' Motion to Set Aside the Judgment on August 29, 2003. [Doc. No. 79.] On January 6, 2004, it appears that the Ninth Circuit affirmed the Court's order denying Plaintiffs' Motion to Set Aside the Judgment. [Doc. Nos. 80, 89.] The Court entered judgment in favor of Cendant, Fannie Mae, and Matthews on October 21, 2009. [Doc. No. 99.]

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4. The Court also granted Matthews' Motion to Dismiss for Failure to State a Claim. [Doc. No. 59.]

ii. Case Status with Respect to Attorneys Equity

On August 30, 2002, Plaintiffs filed a request for entry of default as to Attorneys Equity. [Doc. No. 16.] The request was denied due to deficiencies with the proof of service. [Doc. No. 17.] Plaintiffs filed an amended proof of service on September 6, 2002; default was entered by the clerk as to Attorneys Equity on September 9, 2002. [Doc. Nos. 19, 22.] On September 18, 2002, Plaintiffs filed a Motion for Default Judgment against Attorneys Equity. [Doc. No. 37.] On June 26, 2003, Plaintiffs filed an *Ex Parte* Application for Renewed Motion to Enter Default Judgment against Attorneys Equity. [Doc. No. 74.] On August 29, 2003, the Court denied Plaintiffs' *Ex Parte* Application for Renewed Motion to Enter Default Judgment because Plaintiffs' *Ex Parte* Application and supporting declaration failed to prove the damages alleged in the Verified Complaint. [Doc. No. 78.]

On January 5, 2004, the Court removed the action from the active calendar. [Doc. No. 88.] On January 6, 2004, it appears that the Ninth Circuit affirmed the Court's order denying Plaintiffs' Motion to Set Aside the Judgment and the Court's order denying Plaintiffs' *Ex Parte* Application for Renewed Motion to Enter Default Judgment Against Attorneys Equity. [Doc. Nos. 80, 89.]

Plaintiffs' mandamus petition was denied by the Ninth Circuit on November 3, 2008. [Doc. No. 90.]

On April 7, 2009, Plaintiffs filed a "Motion to Restore Case to Active Caseload for Purpose of Entering Final Judgment; Pursuant to Rule 54(b,c) of the F.R.C.P." ("Plaintiffs' Motion to Restore"). [Doc. No. 92.] The Court issued an Order to Show Cause ordering Attorneys Equity to respond to Plaintiffs' Motion to Restore on May 6, 2009. [Doc. No. 96.] Attorneys Equity filed a response on May 18, 2009. [Doc. No. 97.] Plaintiffs filed their reply on May 20, 2009. [Doc. No. 98.] Plaintiffs, meanwhile, filed a Petition for a Writ of Mandamus in the Ninth Circuit and the Court issued an order abstaining from ruling on Plaintiffs' Motion to Restore pending disposition of the matter by the Ninth Circuit. [Doc. No. 100.] On April 14, 2010, the Ninth Circuit denied Plaintiffs' Petition for a Writ of Mandamus without prejudice, finding that Plaintiffs may file a new petition if the Court has not entered a final judgment as to Attorneys Equity within 60 days of the Ninth Circuit's order. [Doc. No. 101.]

On May 27, 2010, the Court granted Plaintiffs' Motion to Restore and further ordered Plaintiffs to show cause as to why the action shall not be dismissed with prejudice as to Attorneys Equity based on the doctrine of *res judicata*. [Doc. No. 102.] Plaintiffs did not respond to the Court's Order to Show Cause.

DISCUSSION

The instant action, which was dismissed as to the other defendants based on the doctrine of *res judicata*, must also be dismissed as to Attorneys Equity.

Appendix B

I. THE COURT, *SUA SPONTE*, RAISES THE ISSUE OF DISMISSAL

To prevent judicial waste and facilitate the orderly administration of justice, "if a court is on notice that it has previously decided the issue presented, the court may dismiss [an] action *sua sponte*, even though the defense has not been raised." *Arizona v. California*, 530 U.S. 392, 412 (2000) (internal citations omitted); *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1054-55 (9th Cir. 2005); *Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery*, 44 F.3d 800, 802-03 (9th Cir. 1995) ("*Res judicata* doctrine preserves scarce judicial resources, as well as protecting litigants from multiple lawsuits . . . so courts have an independent interest in raising it, even if a party does not."). The parties, however, must be given an opportunity to be heard. *Headwaters*, 399 F.3d at 1055.

The Court has been involved in three actions initiated wholly, or in part, by Hollis-Arrington. The Court therefore has extensive knowledge of the facts, issues, and parties involved in the three proceedings, all of which concern the same underlying events – the foreclosure and sale of the Property. The Court, *sua sponte*, raises the issue of *res judicata* because entry of a default judgment against Attorneys Equity would squarely conflict with a prior judgment entered in Attorneys Equity's favor. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming the district court's denial of a motion for entry of a default judgment and *sua sponte* dismissal of the plaintiff s claims); *United States v. Approximately $28,000 in U.S. Currency*, 2010 U.S. Dist. LEXIS 40302, *4 (N.D.

Cal. Apr. 5, 2010) (Conti, J.) (explaining that the entry of default judgment is discretionary).

Plaintiffs have been heard previously on the issue of whether their claims are barred under the doctrine of *res judicata*. Cendant and Fannie Mae presented the issue in their Motion to Dismiss in this action, and Plaintiffs filed an opposition to their Motion to Dismiss and appeared at a hearing on the matter. Although the Court did not specifically address the issue of *res judicata* with respect to non-appearing Attorneys Equity, the issue is equally applicable to that defendant. *See Columbia Steel Fabricators*, 44 F.3d at 803 (affirming a *sua sponte* grant of summary judgment in favor of a non-appearing defendant because the nonmoving party had the opportunity to be heard on the issue of *res judicata* as it applied to another defendant); *Silverton v. Dept. of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) ("A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related."). Plaintiffs had an additional opportunity to be heard in response to the Court's Order to Show Cause dated May 27, 2010. Plaintiffs, however, failed to file a response. Thus, the Court properly exercises its power to *sua sponte* raise the issue of *res judicata*.

II. RES JUDICATA BARS THE INSTANT ACTION AGAINST ATTORNEYS EQUITY

"[T]he doctrine of *res judicata* provides that a final judgment on the merits bars further claims by parties

or their privities based on the same cause of action, and is central to the purpose for which courts have been established, the conclusive resolution of disputes within their jurisdiction." *Hells Canyon Pres. Council v. US. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005) (quoting *Headwaters Inc.*, 399 F.3d at 1051-52). The doctrine serves "to conserve judicial resources, protect litigants from multiple lawsuits, and foster certainty and reliance in legal relations." *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1000 (9th Cir. 1980). A party bound by *res judicata* is precluded from bringing claims that were raised in the prior proceeding, but also claims that could have been raised. *Providence Health Plan v. McDowell*, 385 F.3d 1168, 1173-74 (9th Cir. 2004). *Res judicata* only applies where the following elements are satisfied: (1) an identity of claims; (2) a final judgment on the merits; and (3) privity between the parties. *Hells Canyon*, 403 F.3d at 686.

a. Identity of Claims

The Ninth Circuit relies on the following factors to determine whether the actions involve the same claims:

> "(1) whether the rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts."

Headwaters Inc., 399 F.3d at 1052 (internal quotations and citations omitted). The fourth element is the most important factor in the analysis. *Id.*

Here, the elements demonstrate that the claims at issue in the prior proceedings correspond almost exactly to the claims at issue in the instant action. Specifically, and most importantly, the second action and the instant action arise from the same transactional nucleus of facts—the foreclosure and sale of the Property. *See Western Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir. 1992) ("Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together."). Both complaints include allegations that Attorneys Equity served as the trustee during the foreclosure process, and that, in that capacity, Attorneys Equity unlawfully held a trustee sale of the Property. The two actions therefore necessarily involve the infringement of the same right, Plaintiffs' alleged ownership of and entitlement to the Property.

Of the nine causes of action in the Verified Complaint in the instant action, seven are almost identical to the causes of action set forth in the second action.[5] In the instant

5. In both actions, Plaintiffs seek relief for the defendants' alleged deceit, fraud, intentional infliction of emotional distress, wrongful foreclosure, and slander of title. In both actions, Plaintiffs claim that Cendant, Fannie Mae, and Attorneys Equity were involved in a conspiracy, though Plaintiffs relied on a RICO theory in the second action and civil conspiracy theory in the instant action.

action, Plaintiffs also allege discrimination in violation of the California Unruh Act and seeks to void the trustee's deed. Plaintiffs were clearly aware of these claims and could have brought them in the second action because they concern the same "transactional nucleus of facts"—the loan to Hollis-Arrington by Cendant and the subsequent foreclosure and sale of the Property. *Tahoo-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) ("Newly articulated claims based on the same nucleus of facts may still be subject to a res judicata finding if the claims could have been brought in the earlier action."); *Lindsay v. Beneficial Reins. Co.*, 59 F.3d 942, 952 (9th Cir. 1995) (res judicata applies even if second action involves new evidence or new theories). Indeed, in the second action, Plaintiffs specifically alleged that the defendants conspired to offer and offered loans to low- and middle-income people of color despite the fact that those individuals did not qualify for the loans. Plaintiffs also expressly sought to rescind the trustee's deed and invalidate the trustee's sale. The two actions necessarily rely on the same evidence—the loan process, the default of the loan, and the foreclosure and sale of the Property.

Finally, the rights or interests established in Attorneys Equity's favor, and which resulted in the dismissal of the second action with prejudice, would be impaired by the entry of judgment against Attorneys Equity in the instant action. The Court finds that an identity of claims exists between the proceedings.

b. Final Judgment on the Merits

A final judgment on the merits bars a plaintiff from bringing the same cause of action in a new proceeding. *Hells Canyon*, 403 F.3d at 686. A court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) constitutes a final judgments on the merits. *See Stewart v. United States Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002) (explaining that "a dismissal for failure to state a claim under Rule l 2(b)(6) is a 'judgment on the merits' to which res judicata applies.") (internal citations omitted).

In the second action, the Court dismissed Hollis-Arrington's claims against all defendants, including non-appearing Attorneys Equity, as a matter of law or for failure to state a claim and the Ninth Circuit affirmed the judgment of the Court. [CV 01-5658, Doc. Nos. 136, 152.] Accordingly, the Court finds that the Court's order in the second action constituted a final judgment on the merits.

c. Privity Between the Parties

Res judicata only binds those who were parties to, or were in privity with parties to, the earlier actions. *See Hells Canyon*, 403 F.3d at 686. Privity "is a legal conclusion designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved." *Headwaters*, 399 F.3d at 1052-53 (internal quotations and citations omitted). "A nonparty can be bound by the litigation choices made by his virtual representative, . . .

only if certain criteria are met: '[A] close relationship, substantial participation, and tactical maneuvering all support a finding of virtual representation; identity of interests and adequate representation are necessary to such a finding.'" *Id.* at 1053 (internal quotations omitted).

The parties in the second action are almost identical to those in the instant action. Hollis-Arrington, Attorneys Equity, Cendant, and Fannie Mae are parties in both proceedings. Moreover, the Court is satisfied that Hollis-Arrington was the virtual representative of Lightfoot, the only non-party to the second action. The parties clearly share a close relationship due to the fact that Lightfoot is Hollis-Arrington's daughter and resided in Hollis-Arrington's home, the Property. *See Velazquez v. INS*, 1999 U.S. Dist. LEXIS 17933, *8-10 (N.D. Cal. Nov. 10, 1999) (Jenkins, J.) (concluding that privity existed between close relatives). Although Lightfoot was not a named party to the second action, Hollis-Arrington transferred the property to Lightfoot and Lightfoot filed a bankruptcy petition to forestall the sale of the Property. Plaintiffs therefore share the same interests in the claims and Hollis-Arrington adequately and aggressively pursued those claims in all prior proceedings. Thus, the Court finds privity between Plaintiffs.

Appendix B

CONCLUSION

Based on the foregoing, the Court hereby orders that the action be **DISMISSED WITH PREJUDICE** against Attorneys Equity, and judgment entered forewith.

IT IS SO ORDERED.

DATED: June 11, 2010

By /s/
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT, ET AL.,
Petitioners,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036
(212) 326-2000

JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

Attorneys for Respondent

QUESTION PRESENTED

In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), this Court construed precedents dating back two centuries as establishing a "basic rule" concerning the jurisdictional effects of a "sue and be sued" provision in a federal corporation's charter. *Id.* at 257. Under that rule, when the provision specifically authorizes the organization to "sue and be sued *in federal courts*," the provision "extends beyond a mere grant of general corporate capacity to sue" and affirmatively "confer[s] federal jurisdiction" over suits by and against the organization. *Id.* (emphasis added). The charter of respondent Fannie Mae provides that Fannie Mae may "sue and ... be sued ... in any court of competent jurisdiction, State *or Federal*." 12 U.S.C. § 1723a(a) (emphasis added).

The question presented is whether the Ninth Circuit erred in agreeing with the D.C. Circuit—the only other court of appeals to have considered the question—that under *Red Cross*, the express reference to federal courts in the Fannie Mae charter's sue-and-be-sued clause establishes subject matter jurisdiction in cases brought by or against Fannie Mae.

PARTIES TO THE PROCEEDING

Petitioners are Crystal Lightfoot and Beverly Hollis-Arrington, plaintiffs-appellants below.

The principal respondent and defendant-appellee below is Fannie Mae, also known as the Federal National Mortgage Association. Cendant Mortgage Corporation, Attorneys Equity National Corporation, and Robert O. Matthews were also defendants below, but are no longer involved in this litigation.

RULE 29.6 STATEMENT

Fannie Mae is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate which has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding stock.

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INTRODUCTION

In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), this Court construed a line of precedents dating back to *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), concerning the jurisdictional effects of "sue and be sued" clauses in federal corporate charters. Those precedents, the *Red Cross* Court held, together establish the following rule: if a sue-and-be-sued provision specifically references federal courts, then it establishes federal jurisdiction over suits by and against the chartered entity, even absent a separate basis for federal jurisdiction, such as a federal question or diversity of citizenship.

That rule resolves this case. Fannie Mae's corporate charter authorizes it to "sue and to be sued ... in any court of competent jurisdiction, State *or Federal*." 12 U.S.C. § 1723a(a) (emphasis added). As the Ninth Circuit held below, that language establishes federal jurisdiction under *Red Cross*.

That holding implicates no circuit conflict. The D.C. Circuit, the only other court of appeals to have considered the question, also applied *Red Cross* and held that Fannie Mae's charter grants federal subject matter jurisdiction. *See Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008). Petitioners cite several appellate decisions interpreting *other* federal charters as not granting federal jurisdiction, but every cited case was decided before *Red Cross*. To the extent there was a conflict among the courts of appeals concerning whether an explicit reference to federal courts in a sue-and-be-sued clause grants federal jurisdiction, *Red Cross*

resolved it, and petitioners offer no valid basis for overruling that decision.

Finally, this case is in any event a poor vehicle through which to reconsider *Red Cross* or to reinterpret Fannie Mae's charter. The underlying action is the third of five essentially identical, frivolous complaints filed in different courts throughout the country. The courts below properly dismissed the complaint as barred by res judicata and collateral estoppel, as have courts in other jurisdictions where petitioners filed similar complaints. If this Court holds that federal courts lack jurisdiction over this case, it likely would not change the ultimate outcome, as the state court is sure to dismiss petitioners' claims as barred by res judicata and collateral estoppel. To the extent the question presented is worthy of review, the Court should await a case where the answer actually could make a difference in the case.

The petition should be denied.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

Originally established in 1938 in response to the Great Depression, Fannie Mae was created to fulfill an "important public mission[]," 12 U.S.C. § 4501(1), *viz.*, promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. National Housing Act Amendments of 1938, Pub. L. No. 75-424, 52 Stat. 8, 23 (1938); 12 U.S.C. §§ 1716-1719; *see* S. Rep. No. 102-282, at 9 (1992) (stating that Fannie Mae was "legislatively chartered for public purposes"). Because this mission was a critical component of federal housing policy, Fannie Mae was constitut-

ed as a governmental entity and organized under federal law. 12 U.S.C. § 1716. Its original 1938 charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934).

In 1954, with the enactment of the Housing Act of 1954, Fannie Mae was converted to a "mixed-ownership corporation," and the "sue-and-be-sued" provision in its charter was amended to authorize Fannie to "sue and to be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." Housing Act of 1954, Pub. L. No. 83-560, § 309(a), tit. II, 68 Stat. 590, 620-21 (1954). Notwithstanding these changes to its structure (and others that followed[1]), Fannie Mae retained the same fundamental objective of effectuating federal housing policy by making home ownership more accessible to low and middle-income Americans. *See* S. Rep. No. 102-282, at 25 (noting "the Congressional design in chartering the enterprises as privately owned and managed entities with special, public purposes"); *id.* at 34 (recognizing Fannie Mae's "special relationship with the federal government"); Corporate Governance, 70 Fed. Reg. 17,303, 17,309

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[1] In 1968, Fannie Mae was established as a private shareholder owned corporation, Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 802(z)-(ee), 82 Stat. 476, 540-41 (1968), although it remained heavily regulated by the federal government, *see, e.g.*, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941 (establishing the Office of Federal Housing Enterprise Oversight as Fannie Mae's primary regulator).

(Apr. 6, 2005) (acknowledging Fannie Mae's "unique mission").

Because Fannie Mae is tasked with effectuating federal policies and achieving federal goals, Congress has ensured that Fannie Mae's structure and operations remain subject to federal oversight. During the period when this case was removed to federal court, Fannie Mae was required, among other things, to submit annual reports to both houses of Congress and various federal agencies and offices. 12 U.S.C. § 1723a(d)(3)(A), 1723a(j), 1723a(m)-(n). Fannie Mae was also required to meet annual housing goals established by the U.S. Secretary for Housing and Urban Development. *See* 12 U.S.C. §§ 4562-64. And Fannie Mae's prior regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), enacted numerous federal regulations pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941, covering a number of topics from executive compensation to Fannie Mae's capitalization, *see* 12 C.F.R. § 1770.1 (executive compensation); *id.* § 1777.1 (capitalization).

Congress expanded the federal government's oversight of Fannie Mae when it enacted the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (2008). HERA established the Federal Housing Finance Agency ("FHFA") as Fannie Mae's regulator and granted FHFA's Director authority to place Fannie Mae into conservatorship or receivership. 122 Stat. at 2662, 2734. Pursuant to that authority, FHFA's Director placed Fannie Mae into conservatorship on September 6, 2008. FHFA subsequently has promulgated a

number of regulations similar to those in effect prior to the conservatorship, including the requirement that Fannie Mae meet annual housing goals established by FHFA, *see* 2012-2014 Enterprise Housing Goals, 77 Fed. Reg. 67,535 (2012), as well as new regulations concerning conservatorship in particular, *see, e.g.*, 12 C.F.R. § 1237.12 (precluding capital distributions absent FHFA approval).

B. Factual Background

In August 1999, Cendant Mortgage Corporation ("Cendant") lent petitioner Hollis-Arrington $180,400 secured by a deed of trust on property she owned in West Hills, California. Compl. ¶ 9.[2] Roughly a month later, Cendant sold the loan to Fannie Mae, although Cendant remained the loan's servicer. *Id.* ¶ 10. Fannie Mae subsequently sold the loan back to Cendant because it failed to meet Fannie Mae's credit standards.

The first monthly payment on the loan came due in October 1999. Hollis-Arrington failed to make that payment, or any subsequent payment. *Id.* ¶ 12. She asked Cendant for, and was provided, information about programs to cure the default. Hollis-Arrington sought to enter into a forbearance agreement, and alleges that Cendant led her to believe that a forbearance agreement had been approved. *Id.* ¶ 15. Cendant ultimately rejected the application and initiated foreclosure proceedings.

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[2] All citations to "Compl." or "DE" (without a corresponding case number) refer to complaint and district court docket entries in the underlying action, unless otherwise noted.

In May 2000, to prevent foreclosure, Hollis-Arrington filed a bankruptcy petition. That petition was dismissed the next month for failure to pay the required filing fees. *See* DE 31-33, No. 00-bk-14478-GM (Bankr. C.D. Cal. 2000). In July 2000, she filed a second bankruptcy petition, which was again dismissed for failing to pay the required filing fees. This time, the court's dismissal order barred Hollis-Arrington from filing another bankruptcy petition for 180 days. *See* DE 27, 28, No. 00-bk-16423-GM (Bankr. C.D. Cal.).

On September 11, 2000, Hollis-Arrington deeded her home to her daughter, petitioner Crystal Lightfoot. *See* Compl. Ex. E, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Lightfoot filed her own bankruptcy petition. This petition too was dismissed for failure to make the required payments, and the court barred Lightfoot from filing another bankruptcy petition for 180 days. DE 28, 29, No. 00-bk-18360-AG (Bankr. C.D. Cal. 2000).

Cendant scheduled a new foreclosure sale on November 28, 2000, but continued the sale to January 11, 2001, based on Hollis-Arrington's assurance that she was trying to refinance. Although no refinancing ever occurred, the foreclosure was further delayed by court order in the first lawsuit Hollis-Arrington filed in federal district court in October 2000. *See* DE 25, No. 00-cv-11125-CBM-AJW (C.D. Cal. Jan. 10, 2001); *see also infra* at 7-8. On February 5, 2001, four days after the district court lifted the temporary stay it had granted (DE 44, No. 00-cv-11125-CBM-AJW (C.D. Cal. Feb. 1, 2001)), Lightfoot filed a second bankruptcy case, which was dismissed the next month. Lightfoot was again barred from making a

new bankruptcy filing for 180 days. DE 30, 31, No. 01-bk-10910-AG (Bankr. C.D. Cal. 2001).

Lightfoot then transferred 50% of the property back to Hollis-Arrington (Compl. ¶ 102, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003)), who filed her third bankruptcy petition on March 22, 2001. Cendant at that point obtained "in rem" relief from the automatic stay in order to proceed with foreclosure, which was scheduled for June 29, 2001. DE 33, No. 01-12579-GM (Bankr. C.D. Cal.). Despite Hollis-Arrington's attempt to seek a stay in her second suit in federal district court, the foreclosure sale was finally held that day. Compl. ¶¶ 61-72, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Harold Tennen and Ed Feldman bought the property at the sale and, through state court action, evicted Hollis-Arrington in September 2001. *Id.* ¶¶ 80-81. They subsequently sold the property to Robert O. Matthews. Compl. ¶ 5.

C. Related Actions

This appeal arises from the third of at least five suits filed by petitioners in connection with the foreclosure of the property. In the first suit, which Hollis-Arrington filed against Cendant in the Central District of California on October 18, 2000, she alleged that Cendant had "fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead." *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *2 (D.N.J. Nov. 15, 2005). The district court granted Cendant's motion for summary judgment, DE 102, No. 00-cv-11125-CBM-AJW (C.D. Cal. July 15, 2002), and the Ninth

Circuit affirmed, *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 462 (9th Cir. 2003).

In June 2001, while the first case was pending, Hollis-Arrington filed a second action against Cendant, Fannie Mae, and Attorneys Equity National Corporation, again in the Central District of California. This time, her theory was that "that Cendant Mortgage Corporation and the Fannie Mae Corporation violated the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. §§ 1962(c) and (d), and federal lending laws by conspiring to issue mortgage loans to unqualified borrowers so that Cendant could acquire the properties by foreclosure." *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 463 (9th Cir. 2003). In May 2002, the district court dismissed the case, DE 131, at 7, No. 01-cv-05658 (C.D. Cal. May 28, 2002), and the Ninth Circuit affirmed, *Hollis-Arrington*, 61 F. App'x at 463.

After the district court dismissed Hollis-Arrington's complaint in the second suit, she and her daughter, Crystal Lightfoot, filed this case in Los Angeles Superior Court on July 18, 2002. They sued the same parties Hollis-Arrington had sued in the second action, and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The district court granted motions by Cendant and Fannie Mae to dismiss on res judicata grounds, and subsequently denied a motion to reopen the judgment under Rule 60(b). The Ninth Circuit affirmed. *See infra* at 9-13 (detailing the full procedural history of this litigation).

Hollis-Arrington subsequently filed a fourth action in federal court in the District of Columbia. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 50 (3d Cir. 2006) (per curiam) (discussing No. 03-cv-02416-TPJ (D.D.C. 2003)). The district court granted defendants' motion to dismiss on res judicata grounds, DE 41, No. 03-cv-02416-TPJ (D.D.C. Feb. 17, 2004), and the Court of Appeals for the D.C. Circuit affirmed, Order, *Hollis-Arrington v. Fannie Mae*, No. 04-5068, at 2 (D.C. Cir. Nov. 15, 2004).

Finally, petitioners filed a fifth suit in federal court in New Jersey. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The defendants moved to dismiss on a variety of grounds, including res judicata, and the district court granted the motion. *Id.* at *5-12. The Court of Appeals for the Third Circuit affirmed. *PHH Mortg. Corp.*, 205 F. App'x at 55; *see id.* at 52-53 ("res judicata bars suit against . . . Fannie Mae").

D. Proceedings Below

1. As noted above, petitioners filed this case in Los Angeles Superior Court after the similar complaint Hollis-Arrington had previously filed in federal district court was dismissed. On August 22, 2002, Fannie Mae removed the case to federal district court. On August 26, 2002, petitioners filed an application to remand, which was denied on September 5, 2002.

In late August, while the remand briefing was ongoing, defendants Fannie Mae, Cendant, and Matthews filed motions to dismiss on res judicata grounds. On February 20, 2003, the district court granted Cendant's and Fannie Mae's motion to dismiss, concluding that all three elements of res judi-

cata were satisfied. First, "[p]laintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property. ... Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions." DE 59 at 8. Second, "the requirement that the earlier actions result in a final judgment on the merits is met" because "[u]nder federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal." DE 59 at 9. Third, the parties were so similar that their interests were adequately represented in the original suit. DE 59 at 10. The court also granted defendants' motion on the alternative ground that petitioners' claims were barred by collateral estoppel.

On June 4, 2003, petitioners filed a motion to set aside the judgment as to all defendants other than Attorneys Equity, and on August 29, 2003, the district court denied the motion. DE 79, at 1. Although judgment had not been entered against Attorneys Equity, petitioners filed a notice of appeal, and on December 15, 2003, the Ninth Circuit summarily affirmed. SER-7-8.[3] This case was removed from the district court's active docket and remained dormant for more than five years.

2. On April 7, 2009, petitioners filed a motion in the district court to restore this case to the court's active calendar for the purpose of entering final judgment pursuant to Federal Rule of Civil Procedure 54(b). On October 21, 2009, the district court

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[3] Citations to "SER" refer to the Supplemental Excerpts of Record filed in the Ninth Circuit below.

entered judgment in favor of Cendant, Fannie Mae, and Matthews, "consistent with" its prior order granting the defendants' motions to dismiss. Pet. App. 41a. On May 27, 2010, the district court ordered petitioners to show cause no later than June 10, 2010, why the action should not be dismissed with prejudice as to Attorneys Equity based on res judicata. Petitioners did not respond by the required deadline, and on June 11, 2010, the court entered judgment for Attorneys Equity on res judicata grounds.

That same day, petitioners moved to set aside the judgment pursuant to Rule 60(b). On September 27, 2010, the district court denied petitioners' motion to set aside the judgment. The district court first held that it lacked jurisdiction over the motion because petitioners failed to file it within a year after entry of judgment. The court held that "[a]lthough [it] did not initially enter a judgment on a separate document as required by Federal Rule of Civil Procedure 58(a), Petitioners demonstrated their belief that the February 20, 2003 order was a final judgment." DE 117 at 7. "Because the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal." *Id.*

The court also rejected petitioners' motion on the merits, explaining that "[p]laintiffs have failed to present clear and convincing evidence that Defendants' attorneys perpetrated fraud upon the Court, that the judgment was unfairly procured, or that the evidence was not previously available to petitioners.

Indeed, the evidence was clearly discoverable prior to the filing of the Rule 60(b) Motion because the documents are public records and plaintiffs presented the same facts to the Court more than seven years ago." DE 117 at 8. The court also rejected petitioners' request for "'an independent action for the court to set aside the judgment for "fraud upon the court."'" DE 117 at 9. Construing the request as one for relief under Rule 60(b)(6), the court held that there was "no basis for this extraordinary relief." *Id.* Petitioners appealed.

3. On appeal, the Ninth Circuit issued a memorandum order, holding that "[t]he district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief." *Lightfoot v. Cendant Mortg. Corp.*, 465 F. App'x 668, 669 (9th Cir. 2012). The court of appeals also held that "[t]he district court had removal jurisdiction because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Id.*

On January 20, 2012, petitioners petitioned for panel rehearing and rehearing en banc. On April 13, 2012, the court of appeals sua sponte withdrew its earlier memorandum disposition and denied as moot petitioners' petition for rehearing and rehearing en banc. The Court appointed pro bono counsel for petitioners and directed the parties to file either replacement or supplemental briefs. The Court directed that "[i]n addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of [Fannie

Mae]." DE 32 at 2, No. 10-56068 (9th Cir. Apr. 13, 2012).

4. After new briefing and argument, the court of appeals held that Fannie Mae's sue-and-be-sued clause "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a. That result, the court held, followed from the "clear rule" established by this Court in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), "for construing sue-and-be-sued clauses for federally chartered corporations." Pet. App. 5a.

Specifically, the court explained that in *Red Cross*, this Court recognized "a line of cases, stretching back to *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), that made clear that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts." Pet. App. 6a (citing *Red Cross*, 505 U.S. at 252-56). Under that clear "rule," when "federal charters, like those of the Red Cross and of Fannie Mae, 'expressly authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction.'" Pet. App. 7a-8a (quoting *Red Cross*, 505 U.S. at 257). The court concluded: "As the Court of Appeals for the D.C. Circuit has already held, that rule resolves this case." Pet. App. 8a (citing *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008)).

District Judge Stein, sitting by designation, dissented, principally arguing that the majority's posi-

tion fails to give meaning to the term "any court of competent jurisdiction" in the sue-and-be-sued clause. *See* Pet. App. 26a ("Absent the 'of competent jurisdiction' proviso, this clause would clearly confer jurisdiction on the federal courts."); Pet. App. 26a-32a. The dissent contended the "plain language" of that proviso required reading Fannie Mae's charter as merely allowing Fannie Mae to sue and be sued in any court that independently has jurisdiction over the action. Pet. App. 26a.

The majority rejected that position. The majority noted that the dissent's "plain language" argument relied on several court of appeals decisions reading a "court of competent jurisdiction" proviso in other federal charters as suggesting that the federal charter was not an independent grant of jurisdiction. Pet. App. 26a-27a (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971, 973 (5th Cir. 1981); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1368 (3d Cir. 1974)). "But all of these cases," the court explained, "predate *Red Cross*." Pet. App. 14a.

The majority further explained that before 1954, Fannie Mae's charter allowed it to sue and be sued "in any *court of law or equity*, State or Federal," but replaced the italicized words with "court of competent jurisdiction" in 1954. Pet. App. 8a. The dissent acknowledged that before 1954, the statute vested federal courts with jurisdiction, but argued that Congress stripped the provision's jurisdiction-conferring power in the 1954 amendment. Pet. App. 32a-33a. The majority responded that "[t]here is no

indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase 'court of law or equity' with the phrase 'court of competent jurisdiction.'" *Id.* at 9a. "If Congress wanted to eliminate the grant of federal question jurisdiction from Fannie Mae's charter," the court observed, "it is highly unlikely that it would have done so in the way the dissent suggests." Pet. App. 9a, 11a. Instead, the court explained, the distinction between law and equity was all but an "anachronism" by 1954, and thus "the most likely explanation for replacing the phrase 'court of law or equity' with 'court of competent jurisdiction' is that Congress was simply modernizing Fannie Mae's charter" by deleting that anachronism. Pet. App. 10a

The court accordingly held that the district court had properly exercised jurisdiction in this case, and affirmed the district court's judgment on the merits for the reasons stated in its prior opinion. Pet. App. 21a.

5. Petitioners sought rehearing en banc. The Ninth Circuit denied the petition without dissent, with only District Judge Stein recommending the petition be granted. Pet. App. 1a-2a.

REASONS FOR DENYING THE PETITION

The petition should be denied. *Red Cross* squarely holds that where, as here, a federal corporate charter's sue-and-be-sued clause specifically mentions suit in federal court, the clause establishes federal jurisdiction over suits by and against the chartered entity. 505 U.S. at 257. There is no circuit conflict on the meaning and application of *Red Cross*. There is also no reason to overrule *Red Cross*—a

statutory precedent that Congress is free to overrule at any time—and this case would be a poor vehicle for doing so in any event.

A. The Decision Below Is Correct

1. *Centuries-Old Precedents Hold That A Federal Charter's Explicit Reference To Suit In Federal Court Establishes Federal Jurisdiction*

Petitioners principally contend that this Court should grant certiorari because the decision below is "inconsistent" with this Court's precedent. Pet. 6-11. Petitioners are wrong. The Ninth Circuit's decision is not only consistent with, but is compelled by, a two-century-old line of this Court's precedents culminating in *Red Cross*.

Red Cross involved a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision "confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* This Court noted that it did "not face a clean slate" in considering the question. *Id.* at 252. Rather, since the Republic's early years, the Court had on "several occasions . . . consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And the critical question in those early cases, the Court emphasized, was

whether the "sue and be sued" provision specifically mentioned the federal courts; where it did, the Court held that the provision conferred federal subject matter jurisdiction. *Id.*

The first case in this line was *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), which held that a provision authorizing the first Bank of the United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal court jurisdiction. This generally stated power to sue and be sued, the Court explained, "is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court." *Id.* at 85-86. By way of contrast, the Court pointed to a different provision, which subjected the president and directors in their individual capacity to suit and "expressly authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824), the Court considered a revised sue-and-be-sued clause written into the charter of the second Bank of the United States. That clause now authorized the Bank to "sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." *Id.* at 817 (emphasis added). Contrasting that clause with the first Bank's provision, which merely granted "a general capacity in the

Bank to sue, without mentioning the Courts of the Union," the Court held that the new reference to suit specifically "'in every Circuit Court of the United States'" sufficed to "confer[] jurisdiction on the Circuit Courts of the United States." *Id.* at 817-18.

In *Red Cross*, the Court read *Deveaux* and *Osborn* as together establishing "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Red Cross*, 505 U.S. at 255 (emphasis added); *see id.* at 257 ("The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued' provision should be read to confer jurisdiction."). Under this "basic rule," the Court explained, when a federal charter explicitly authorizes the chartered entity "to sue and be sued in federal courts," the provision "extends beyond a mere grant of general corporate capacity to sue" and "suffices to confer federal jurisdiction." *Id.* at 257.[4]

As the Ninth Circuit correctly held, the *Deveaux-Osborn-Red Cross* rule "resolves this case." Pet. App. 8a. From the first day, Congress has always authorized Fannie Mae to sue and be sued *in federal court specifically*. *Compare* National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253

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[4] The Solicitor General filed an amicus brief in *Red Cross* articulating the position ultimately adopted by the Court. *See* Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6 (this Court's decisions since at least 1824 have "established a clear rule that congressional charters provide for original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts").

(1934) (predecessor entity can be "sue and be sued, complain and defend, in any court of law or equity, State or Federal") *with* 12 U.S.C. § 1723a(a) (Fannie Mae can sue and be sued "in any court of competent jurisdiction, State or Federal"). There is no ambiguity about the controlling charter language or its jurisdictional effect.

Petitioners' argument to the contrary cannot escape *Red Cross*. According to petitioners, "there is nothing in the statutory text that indicates that Congress intended Fannie Mae's 'sue and be sued' provision to confer original jurisdiction with the federal courts." Pet. 26. Yes, there is: the explicit reference to suit in federal court reflects precisely that congressional intent, as *Red Cross* squarely holds.

Petitioners also cite *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900), which holds that a provision merely authorizing suit "in a court of competent jurisdiction" did not itself confer federal jurisdiction. *Id.* at 506-07. The petition itself acknowledges the glaring distinction between that provision and the Fannie Mae charter provision: "the inclusion of the phrase 'State or Federal.'" Pet. 8. That distinction makes all the difference under *Red Cross*.[5]

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[5] Petitioners also rely on *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U.S. 381 (1939), but that case is entirely inapposite. *Keifer* held that a federal corporation entitled "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal," was not protected by sovereign immunity from suit. *Id.* at 392-93. That holding had nothing to do with the text of the federal charter—the question before the Court was "not a textual problem," but rather turned on background principles of sovereign immunity. *Id.* at 389. More important, it is true but irrelevant that the Court "did not

Petitioners also assert that two of this Court's cases—*Minnesota v. United States*, 305 U.S. 382 (1939), and *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573 (1946)—"could be interpreted to mean that, in order for Congress to ensure that a litigant is able to bring a case in either state or federal court, it *must* include the phrase 'in any court of competent jurisdiction, *State or Federal*.'" Pet. 11. Even if those cases were subject to that interpretation, petitioners' view of the significance of the words "State or Federal" was specifically considered and rejected in *Red Cross*. The *dissent* in *Red Cross* would have held, as petitioners now submit, that the "addition of the words 'State or Federal' eliminates the possibility that" Red Cross's charter "might be read to limit the grant of capacity to sue in federal court." 505 U.S. at 275 (Scalia, J., dissenting) (emphasis omitted). The Court, of course, disagreed, instead holding that the charter's specific reference to federal courts served to grant federal courts subject matter jurisdiction over suits by and against the Red Cross. *Id.* at 257. The same rule applies to Fannie Mae's charter.

Petitioners all but admit that *Red Cross* compels the result here. They describe that case as holding that "the inclusion of the word 'Federal' in the Red Cross congressional charter conferred original jurisdiction in the federal courts." Pet. 14. And they correctly observe that the "the Ninth Circuit relied

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hold that the language also conferred jurisdiction," Pet. 7, since that question was not before the Court—the only question was whether Congress had "endow[ed] [the] governmental corporation with the government's immunity." 306 U.S. at 389.

heavily on the 'bright-line' rule state by this Court in *Red Cross*." Pet. 30.

Rather than quarrel seriously with the application of *Red Cross* to the facts here, petitioners suggest that the Court should "review its decision in *Red Cross*." Pet. 31. But they offer no basis for doing so other than the "the reasons set forth" in the dissent in that case more than two decades ago. *Id.* This Court, of course, "does not overturn its precedents lightly." *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). To the contrary, "any departure" from stare decisis "demands special justification," *id.* (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)), which certainly requires more than "retreads of assertions [the Court has] rejected before," *id.* at 2037. And "*stare decisis* carries enhanced force when a decision, like [*Red Cross*], interprets a statute," *Kimble v. Marvel Entm't, LLC*, No. 13-720, slip op. at 8 (U.S. June 22, 2015), because "Congress remains free to alter what [the Court has] done." *Patterson v. McLean Credit Union*, 491 U.S. 169, 173 (1989); *see Bay Mills*, 134 S. Ct. at 2037 (declining to overrule prior precedent on tribal immunity because, *inter alia*, "it is fundamentally Congress's job, not ours, to determine whether or how to limit tribal immunity").

After *Red Cross* was decided, Congress could have rewritten any federal charter with language like the Red Cross's charter, including Fannie Mae's, to restrict its jurisdictional effect. Indeed, Congress enacted a host of provisions altering Fannie Mae's oversight structure in 2008, *see supra* at 4-5, yet did nothing to restrict the scope of federal jurisdiction created by its charter under *Red Cross*. *See Bay*

Mills, 134 S. Ct. at 2038 ("Since [the prior decision], Congress has continued to exercise its plenary authority over tribal immunity, specifically preserving immunity in some contexts and abrogating it in others, but never adopting the change Michigan wants.").

2. *The Particular History Of Fannie Mae's Charter Confirms That It Grants Subject Matter Jurisdiction*

Even beyond a straightforward application of the *Deveaux-Osborn-Red Cross* rule, the specific history of Fannie Mae's charter further confirms that it grants federal courts subject matter jurisdiction over any suit brought by or against Fannie Mae.

Before 1954, Fannie Mae's charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934). Petitioners do not mention this history, but there is no question that this pre-1954 statute conferred federal jurisdiction—this Court held in *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), that the FDIC's identically worded charter granted federal jurisdiction, *id.* at 455, which is why even the dissent below conceded that Fannie Mae's original charter "inarguably gave Fannie Mae access to the federal courts." Pet. App. 33a.

The only question here accordingly is whether Congress intended to *eliminate* jurisdiction in 1954, when it amended Fannie Mae's charter to replace the phrase "in any court of law or equity" with the phrase "in any court of competent jurisdiction." The

answer is no, as the Ninth Circuit and D.C. Circuits have recognized.

This Court's precedents have always recognized that when a sue-and-be-sued clause does *not* refer to federal courts, an intent to create federal jurisdiction cannot be inferred. *See, e.g.*, *Osborn*, 9 Wheat. at 818 ("a general capacity in the Bank to sue, without mentioning the Courts of the Union, may not give a right to sue in those courts"). Given that clear, longstanding rule, if "Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Pirelli*, 534 F.3d at 786. Indeed, Congress did exactly that in the same year it added the "of competent jurisdiction" language to Fannie Mae's charter, deleting the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC") statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633 (1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

That conclusion is confirmed by the complete silence in the 1954 amendment's legislative history on the matter. That amendment made numerous changes to the charter as part of an effort to partially privatize Fannie Mae. But while the legislative history of the 1954 amendment "went into great de-

tail explaining the provisions of the 1954 amendments designed to privatize Fannie Mae," it "never once mentioned [the] sue-and-be-sued-clause." Pet. App. 16a. Such silence would be more than a little surprising if the 1954 amendment to the sue-and-be-sued clause had the dramatic effect petitioners posit. "Eliminating the charter's grant of federal question jurisdiction would have imposed a severe new restraint on Fannie Mae's ability to litigate in federal court." Pet. App. 9a. And "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or the Senate to have said something if they intended a change of that sort. Instead, there was silence." Pet. App. 10a; *see Chisom v. Roemer*, 501 U.S. 380, 396 n.23 (1991) ("Congress' silence in this regard can be likened to the dog that did not bark.")

The fact that Congress retained the jurisdiction-conferring character of the sue-and-be-sued provision after Fannie Mae's partial privatization is hardly surprising. Even though Congress in 1954 reduced the level of public ownership in Fannie Mae, Fannie Mae remained (and remains) a uniquely federal enterprise—a federally chartered corporation with the important national purpose of assuring that home ownership is accessible for low and middle-income Americans. There is no reason to infer that Congress secretly wanted to deprive Fannie Mae of access to federal courts.

This statutory history answers petitioners' (and the Ninth Circuit dissent's) contention that following *Red Cross* would render the term "court of competent jurisdiction" superfluous. Pet. 28; Pet. App. 31a. As

the majority below explained, replacing "court of law and equity" with "court of competent jurisdiction" "served the purpose of eliminating an anachronistic reference to courts of law and equity," just as "Congress had recently done in other statutes." Pet. App. 10a, 12a.[6] Petitioners insist that the term "competent jurisdiction" is superfluous under the Ninth Circuit's reading because that term itself only refers to subject matter jurisdiction, and thus has no function if the charter itself grants subject matter jurisdiction. Pet. 27. Yet just two years before the 1954 amendment, this Court interpreted the term "court of 'competent jurisdiction'" in a federal entity's corporate charter as assuring that suit could only be brought against the entity where there was *personal* jurisdiction, i.e., "that review must be in that district where the [defendant] can be served." *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952). More generally, this Court has explained that while the "concept of a court of 'competent jurisdiction'" has "usually" been "used to refer to subject-matter jurisdiction," it "has also been used on occasion to refer to a court's jurisdiction over the defendant's person," *United States v. Morton*, 467 U.S. 822, 828 (1984), which is exactly how Congress used that term here.

The 1954 addition of the phrase "competent jurisdiction" accordingly makes perfect sense for reasons having nothing to do with the elimination of federal jurisdiction, whereas retaining the specific

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[6] Moreover, the "competent jurisdiction" proviso also assures that the sue-and-be-sued provision is not read to grant courts of specialized jurisdiction—such as bankruptcy courts or the Court of Claims, or specialized state courts—the authority to hear suits by or against Fannie Mae. *See* Pet. App. 13a.

reference to federal courts could only mean that Congress intended the sue-and-be-sued clause to continue to confer federal jurisdiction.

B. There Is No Circuit Conflict Concerning The Question Presented

Because the result below is compelled not only by the rule announced in *Red Cross* but by the specific statutory history of Fannie Mae's corporate charter, it is unsurprising that the only other court of appeals to have considered the question presented has agreed with Ninth Circuit below. *See Pirelli*, 534 F.3d at 784.

Petitioners admit that *Pirelli* is the only other circuit decision addressing the question whether the Fannie Mae charter establishes federal jurisdiction over suits by and against Fannie Mae. Pet. 17-18. Petitioners nonetheless insist that a circuit conflict exists, based solely on earlier decisions considering the language of *other* federally chartered corporations. Pet. 17-18 (citing *W. Sec. Co. v. Derwinski*, 937 F.2d 1267 (7th Cir. 1991); *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114 (2d Cir. 1990); *Lomas & Nettleton Co. v. Pierce*, 636 F.2d 971 (5th Cir. 1981); *Lindy v. Lynn*, 501 F.2d 1367 (3d Cir. 1974)). But as the Ninth Circuit recognized, "all of these cases predate *Red Cross*." Pet. 14a. Petitioners cite no post-*Red Cross* circuit decision holding that *any* federal corporate charter specifically referencing federal courts does not confer federal subject matter jurisdiction.

It is true that federal *district* court decisions have disagreed over whether Fannie Mae's charter confers federal subject matter jurisdiction. Pet. 18-20. But

the courts of appeals are fully capable of resolving that conflict without this Court's intervention. Should a court of appeals ever ignore *Red Cross* and create a circuit conflict over the jurisdictional effect of Fannie Mae's charter language, this Court can resolve the conflict when it arises. There is no need for review at this time.

C. This Case Is A Poor Vehicle Through Which To Resolve The Question Presented

Finally, this case presents a poor vehicle for reconsidering *Red Cross* and evaluating Fannie Mae's charter language, because petitioners' underlying case is utterly without merit. Petitioners have filed the same frivolous complaint in five different courts—including four times in the federal courts they now seek to avoid—and the courts below had no trouble dismissing this particular suit on res judicata and collateral estoppel grounds. *See supra* at 7-10. Even if this Court were to hold that the district court lacked jurisdiction to enter that judgment, there is no doubt that the state trial court would dismiss the complaint on the same grounds, as several other courts have done. *Id.* If this Court is to resolve the question presented, it should do so in a case where the answer would make a difference in the litigation.

Moreover, the procedural posture of this case casts doubt on whether petitioners could obtain even a remand to state court, regardless how this Court resolves the question presented. The only question that the Ninth Circuit considered on the merits in the current appeal was whether the district court

abused its discretion in denying petitioners' Rule 60(b) motion to reopen the judgment. *Lightfoot*, 465 F. App'x at 669; *see also* Pet. App. 21a (after concluding that the district court possessed jurisdiction, affirming on the merits "for the reasons stated in our previous unpublished disposition"). Thus, even if the Court were to resolve the question presented in petitioners' favor, petitioners may be required on remand to satisfy Rule 60(b) to obtain any relief. Petitioners are not entitled to Rule 60(b) relief for several reasons.

First, Rule 60(b) motions "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). Here, petitioners did not move under Rule 60(b) until *more than seven years* after judgment was entered against them as to Fannie Mae. *See* DE 117 at 7.

Second, the only basis for relief under Rule 60(b) in light of a favorable decision from this Court as to the question presented would be that the "judgment is void" for lack of subject matter jurisdiction. Fed. R. Civ. P. 60(b)(4). Petitioners never even sought that relief from the district court. *See* DE 117. And even if they had, Rule 60(b)(4) would not entitle them to relief. "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). Even if the Ninth and D.C. Circuits were wrong about the jurisdictional question presented here, there is obviously an "arguable basis" for jurisdiction under Fannie Mae's corporate charter. Thus, to the

extent petitioners are limited to relief under Rule 60(b), they are not entitled to any such relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036
(212) 326-2000

JONATHAN D. HACKER
(*Counsel of Record*)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

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RECORDS AND BRIEFS

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IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,
Petitioners,

v.

CENDANT MORTGAGE CORP., ET AL.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Andrew H. Friedman
Gregory D. Helmer
HELMER FRIEDMAN, LLP
8522 National Boulevard,
Suite 107
Culver City, CA 90232
(310) 396-7714

E. Joshua Rosenkranz
Counsel of Record
Robert M. Loeb
Matthew L. Bush
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

Counsel for Petitioners

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ARGUMENT

I. The Ninth Circuit erroneously read the *Red Cross* ruling as to a non-stock entity to apply to Fannie Mae, a publicly traded stock entity with a distinct sue-and-be-sued clause.

1. The Ninth Circuit erroneously read this Court's *Red Cross* ruling, *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), as adopting a formulaic rule: If a sue-and-be-sued clause mentions federal courts, then it confers federal jurisdiction over all claims against the entity, even those that are purely a matter of state law.[1] And in its opposition, Fannie asks this Court to embrace that misreading of *Red Cross*. *See* Opp. 15.

Contrary to the suggestion of the Ninth Circuit and respondent, however, this Court never said that including the phrase "federal courts" was by itself "necessary and sufficient" to confer jurisdiction. Pet.App. 11a. What this Court actually said in *Red Cross* was: "[O]ur readings of [prior sue-and-be-sued] provisions not only represented our best efforts at divining congressional intent retrospectively, but have also placed Congress on prospective notice of the language necessary and sufficient to confer jurisdiction." *Red Cross*, 505 U.S. at 252. The Court

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[1] *See* Pet.App. 6a ("[A] sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts."); *id.* at 11a ("[A] specific reference to the federal courts was 'necessary *and sufficient* to confer jurisdiction.'").

made clear that a mention of federal courts was *not* on its own sufficient. The Court held that "a congressional charter's 'sue and be sued' provision *may* be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255 (emphasis added). Thus, a court need not read a sue-and-be-sued clause that mentions federal courts to confer jurisdiction.

As Judge Brown of the D.C. Circuit observed, it is a gross misreading of *Red Cross* to have jurisdiction turn solely on the reference to "federal courts:" "[I]f a mere textual mention of federal courts was sufficient, then the *Red Cross* Court wasted many pages articulating other rationales and examining the jurisprudential backdrop against which Congress enacted the Red Cross charter." *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 795 (D.C. Cir. 2008) (Brown, J. concurring).

Properly read, Fannie's charter does not confer federal jurisdiction over state law claims.[2] The phrase "of competent jurisdiction" makes Fannie's clause unlike the Red Cross' because it "look[s] to outside sources of jurisdictional authority." *Califano v. Sanders*, 430 U.S. 99, 106 n.6 (1977). Even the Red Cross recognized that those added words change

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[2] Fannie's suggestion that we "all but admit that *Red Cross* compels the result" is nonsensical. Opp. 20. We have always maintained that Fannie's charter is materially different from the Red Cross'. *See* Pet. 14 ("Fannie Mae's congressional charter is significantly distinguishable."); Lightfoot C.A.Br. 10-11 ("The Red Cross' clause is distinguishable from Fannie Mae's clause.").

the equation. It told this Court that "[t]he 'of competent jurisdiction' language [in certain charters including Fannie's] weakens the case for construing the statute as a grant of original federal jurisdiction, since a statute containing that language might be read to presuppose that jurisdiction is determined by some body of law other than the sue-and-be-sued clause itself." Brief for Petitioner, *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247 (1992) (No. 91-594), 1992 WL 532904, at *32 n.4.

2. Fannie differs from the Red Cross in another important way. Unlike the Red Cross, Fannie is a publicly traded corporation. *See* Opp. ii. Congress has provided a specific rule for determining when a publicly traded corporation is to be treated as a federal entity for the purposes of federal jurisdiction. Under 28 U.S.C. § 1349, district courts have federal jurisdiction *if* the United States owns "more than one-half of [the corporation's] capital stock." That is the governing rule.

This Court found that § 1349 did not dictate a controlling rule as to the Red Cross because the Red Cross is a "nonstock corporation." The Court held that "the effect of [§ 1349, if any,] on nonstock corporations like the Red Cross is unclear." *Red Cross*, 505 U.S. at 251; *see also Veneruso v. Mount Vernon Neighborhood Health Ctr.*, 933 F. Supp. 2d 613, 630 (S.D.N.Y. 2013) ("[T]he Court has declined to resolve the question."). Because it did not deem the statute directly applicable to the Red Cross, this Court proceeded to look to more indirect indicia to determine whether Congress would have wanted federal courts

to have jurisdiction over all claims involving the Red Cross.

But for stock-based federally chartered corporations like Fannie, Congress made its intent plain in § 1349. Such entities are only to be treated as federal entities for the purposes of federal jurisdiction if the United States owns more than 50% of the corporation's capital stock. Given this clearly stated rule, it is error for a court to infer a right to federal jurisdiction from the term "federal courts" in Fannie's sue-and-be-sued clause. There is simply no need for such judicial inferences where Congress has unambiguously spelled out the governing rule.

3. The legislative history also shows that the Ninth Circuit erred in extending federal jurisdiction to all claims involving Fannie. For example, in 1974, Congress amended Fannie's charter providing that Fannie "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Pub. L. No. 93-383, § 806(b), 88 Stat. 633, 727 (codified at 12 U.S.C. § 1717(a)(2)(B)). Through this amendment, Congress "intended to allow Fannie Mae to access the federal courts via diversity jurisdiction pursuant to 28 U.S.C. § 1332." Pet.App. 38a (Stein, J. dissenting). This amendment was necessary to provide diversity jurisdiction because "federally chartered corporations are not 'citizens' of any 'State' for the purposes of section 1332." *Id.* But providing diversity jurisdiction would have been pointless if Fannie's sue-and-be-sued clause already conferred federal jurisdiction.

4. Fannie's distinct sue-and-be-sued clause language and history, and the fact that Fannie is a publicly traded stock corporation, all show that it was a mistake by the court of appeals to read *Red Cross* as adopting a simplistic rule, looking only to whether the clause references "federal courts." But if *Red Cross* did adopt such a rule, this Court should grant review in this case and revisit the wisdom of that rule. The Ninth Circuit's reading of *Red Cross* and application of its "rule" to Fannie demonstrates that Justice Scalia was correct in observing that the Court's ruling was a "wonderland of linguistic confusion—in which words are sometimes read to mean only what they say and other times read also to mean what they do not say." *Red Cross*, 505 U.S. at 265 (Scalia, J. dissenting).

The Ninth Circuit decision dives head first through the looking glass. Its analysis tracks Humpty Dumpty's reasoning: "When *I* use a word ... it means just what *I* choose it to mean—neither more nor less." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 173 n.18 (1978) (quoting *Through The Looking Glass*, in *The Complete Works Of Lewis Carroll* 196 (1939)). Respondent's argument requires a court to read the three-word phrase "of competent jurisdiction" as having *four* separate meanings.[3] Yet all four

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[3] First, Fannie claims that the phrase "of competent jurisdiction" helps "clarify that ... litigants in state courts of limited jurisdiction must satisfy the appropriate jurisdictional requirements." Fannie C.A. Opening Br. 24 (quoting *Pirelli*, 534 F.3d at 785). Second, "[i]t also makes clear that 'litigants, whether in federal or state court, must establish that court's *personal* jurisdiction over the parties.'" *Id.* (quoting *Pirelli*, 534 F.3d at 785). Third, "[t]he phrase also establishes that

sidestep the natural reading of the words—as referring to courts that have an independent basis for jurisdiction.

Fannie's reading of a reference to "federal courts" in a sue-and-be-sued clause as itself dispositive of the subject-matter jurisdiction issue also runs into serious constitutional problems. In "*Osborn*, this Court held that Article III's 'arising under' jurisdiction is broad enough to authorize Congress to confer federal-court jurisdiction over actions involving federally chartered corporations." *Red Cross*, 505 U.S. at 264. But this Court has previously recognized that "[t]he breadth of that conclusion has been questioned." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 492 (1983). It would be highly questionable, for example, for Congress to extend Article III jurisdiction over all federally charted entities, such as the Little League Baseball, *see* 36 U.S.C. § 130501, even if the entity is not in any real sense an arm of the federal government or exercising the powers of the federal government.

Similarly, it would raise serious Article III issues to extend jurisdiction to a federally traded stock corporation, which is not majority owned by the United Sates. *See N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 501 (1979) (rejecting an interpretation

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'litigants relying on the "sue-and-be-sued" provision can sue in federal district courts.'" *Id.* at 26 (quoting *Pirelli*, 534 F.3d at 785). Fourth, it somehow also limits federal jurisdiction to only federal courts that do not "otherwise impose[] additional jurisdictional requirements, such as the Court of International Trade or the Court of Claims." *Id.*

of a statute where it "would give rise to serious constitutional questions"). Such a corporation is doing the bidding of its stockholders. Congress recognized that extending jurisdiction to such stock corporations could be problematic and therefore in § 1349 adopted a rule that such federally-chartered stock corporations that are not majority owned by the U.S. should *not* be treated as federal entities for Article III purposes. The Ninth Circuit and respondent err by failing to heed to that congressional choice.

II. The courts of appeals and district courts are divided.

As detailed in the petition and the dissent, four circuit courts have ruled that a nearly identical sue-and-be-sued clause does not confer jurisdiction. *See* Pet. 17-18; Pet.App. 27a. Fannie tries to wish away the circuit split because those decisions were issued before *Red Cross*. But *Red Cross* "announced no new rule of law." Pet.App. 27a (Stein, J. dissenting). The Court said that the rule at issue was "established" in 1824 by *Osborn* and *Deveaux*. *Red Cross*, 505 U.S. at 253, 256. And the Court explained how it had "appl[ied]" that rule as far back as 1916 in *Bankers' Trust*. *Id.* at 256.

While the parties disagree about what rule the Court applied in *Red Cross*, it is not in dispute that this Court did not purport to change the existing law. See Opp. 16. *Red Cross* was simply another application of a rule that was fully available to the courts of appeals that make up the circuit split.

Moreover, Fannie has not identified one circuit that has concluded its prior precedent has been undermined or altered by *Red Cross*. And those earlier decisions are still being actively followed. For example, the Fifth Circuit has adhered to its ruling that the nearly identical sue-and-be-sued clause in 12 U.S.C. § 1702 does not confer jurisdiction as recently as 2012. *See Johnson v. United States*, 502 F. App'x 412, 417 (5th Cir. 2012) (quoting *Johnson v. Sec'y of & U.S. Dep't of Hous. & Urban Dev.*, 710 F.2d 1130, 1138 (5th Cir. 1983) ("[W]e have previously held that 'section 1702 ... is neither a grant of jurisdiction nor a waiver of the United States generally.'"). Similarly, a district court in the Eighth Circuit considered itself bound by *Bor-Son Building Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978). The district court stated that *Bor-Son* "represents the Eighth Circuit's definitive holding on this issue." *Jewish Ctr. for Aged v. U.S. Dep't of Hous. & Urban Dev.*, 2007 WL 763928, at *4 (E.D. Mo. Mar. 9, 2007).

Fannie also asks the Court to ignore the vast disarray in the district courts concerning the proper interpretation of these sue-and-be-sued clauses. *See* Pet. 18-20. Similar disagreement caused the Court to grant certiorari in *Red Cross*. The first reason the Court gave for taking that case was that "[a]lthough more than 40 district court cases have considered this issue, no result clearly predominates." *Red Cross* 505 U.S. at 250 n.1.

The confusion is so rampant here that even Fannie does not know whether federal jurisdiction exists in any case where it's a party. As a plaintiff, Fannie has repeatedly moved to *remand* cases back to state

court. *See, e.g.*, *Fed. Nat'l Mortg. Ass'n v. Young*, 2013 WL 5488513 (E.D. Va. Aug. 12, 2013); *Fed. Nat'l Mortg. Ass'n v. Rummo*, 2013 WL 6843083 (W.D. Tenn. Dec. 27, 2013); *Fed. Nat'l Mortg. Ass'n v. Goode*, 2011 WL 3349810 (W.D. Va. Aug. 3, 2011); *Fed. Nat'l Morg. Ass'n v. Busby*, 2014 WL 4957201 (N.D. Ala. Oct. 1, 2014); *Fannie Mae v. Lopez*, 2011 WL 4929548 (E.D. Cal. Oct. 17, 2011) *report and recommendation adopted by* 2011 WL 5374592 (E.D. Cal. Nov. 2, 2011); *Fed. Nat'l Mortg. Ass'n v. Brooks*, 2012 WL 773073, at *1 (C.D. Cal. Mar. 7, 2012); *Fannie Mae v. Song Wha Lee*, 2010 WL 3025533, at *1 (N.D. Tex. July 30, 2010); *Fed. Nat'l Mortg. Ass'n v. Smith*, 2013 WL 1759521, at *2 (N.D. Tex. Apr. 5, 2013) *report and recommendation adopted by*, 2013 WL 1763479 (N.D. Tex. Apr. 24, 2013).

In one case, Fannie argued that "no ... basis for original jurisdiction ... exists." Plaintiff's Memorandum in Support of Motion to Remand at 4, *Fed. Nat'l Mortg. Ass'n v. Palmer*, No. 11-cv-00238 (D. Idaho July 12, 2011). In fact, Fannie even asked for, and received, attorney's fees on the ground that the attempted removal was frivolous and "lacked an objectively reasonable basis." *Id.* at 7; *see Fed. Nat'l Mortg. Ass'n v. Palmer*, 2011 WL 5910062, at *4 (D. Idaho Nov. 28, 2011).

In *Red Cross*, this Court stated that its cases were an attempt to give "prospective notice" to Congress about how to draft sue-and-be-sued clauses. *Red Cross*, 505 U.S. at 252. Given the widespread confusion among the federal courts, the job is not yet done.

III. The case presents an excellent vehicle to resolve an important and recurring issue.

In our petition, we explained that since the housing market crashed, the number of cases involving Fannie increased dramatically. Pet. 21. In fact, according to PACER, over 3,500 cases have been filed in federal court with Fannie as a party since the beginning of 2007. And countless others have surely been filed in state court. On top of that, numerous other entities have similar language in their charter. Fannie never contests the importance of the question presented.

Thus, there is a vital need for clarity as to the jurisdictional rule to apply to Fannie. And this case provides the perfect vehicle for providing that clarity. The Ninth Circuit was presented with a single issue and it resolved a single issue: whether "Fannie Mae's federal charter confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet.App. 4a. The majority and dissent devoted 36 pages to that question and that question alone.

Despite this clean opportunity to address the issue, Fannie conjures up two purported reasons as to why this case is a bad vehicle. First, Fannie argues that the Court should not address whether the district court had jurisdiction because it believes our underlying claims are meritless. Opp. 27. But jurisdiction is "a threshold question that must be resolved ... before proceeding to the merits." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88-89 (1998).

Second, Fannie argues that even if the Court ruled in petitioners' favor, the posture of the case "casts doubt" on whether we could obtain a remand to state court. Opp. 27. There's no doubt about it: we would get a remand. According to Fannie, the parties wasted a lot of the Ninth Circuit's time on a decision that has no practical effect, but Fannie waited until now to raise the problem. This defect is just an illusion. Petitioners filed their claims in state court. Fannie removed to federal court, and our motion to remand was denied. If that decision were reversed, all subsequent decisions on the merits would be erased, and the case would be remanded to state court.

But according to Fannie, our ability to get a remand to state court is uncertain because "[t]he only question that the Ninth Circuit considered on the merits in the current appeal was whether the district court abused its direction in denying petitioners' Rule 60(b) motion to reopen the judgment." Opp. 27-28.

That is simply not true. The Ninth Circuit affirmed on the merits "for the reasons stated in [its] previous unpublished disposition." Pet.App. 21a. That unpublished decision states that we appealed "from the district court's judgment dismissing [our] action arising out of foreclosure proceedings as barred by the doctrine of res judicata" in addition to "the order denying [our] motion to set aside the judgment" under Rule 60(b). *Lightfoot v. Cendant Mortgage Corp.*, 465 F. App'x 668, 669 (9th Cir. 2012). Below, Fannie even acknowledged that "[i]n this appeal, plaintiffs ask this Court to review the

district court's order dismissing their claims." Fannie C.A. Opening Br. 36. Fannie's claim that the Ninth Circuit did not consider the merits rings particularly hollow since Fannie devoted a whole section of its brief to the merits, which was entitled "The District Court Properly Dismissed Plaintiffs' Claims On Res Judicata Grounds." *See id.* at 37-41.

In any event, what merits arguments the Ninth Circuit considered on appeal is irrelevant. We could have argued before the Ninth Circuit only that the district court lacked jurisdiction without raising any merits arguments at all. Had we won, we would have been entitled to remand to state court, wiping out the adverse lower court decision on the merits. If we win before this Court, we will get the same result.

This case clearly presents an important and recurring question that affects not just this case, but countless others.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew H. Friedman
Gregory D. Helmer
HELMER FRIEDMAN, LLP
8522 National Boulevard,
Suite 107
Culver City, CA 90232
(310) 396-7714

E. Joshua Rosenkranz
Counsel of Record
Robert M. Loeb
Matthew L. Bush
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

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No. 14-1055

In the Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, ET AL., PETITIONERS

v.

CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM STEWART
Deputy Solicitor General
ALLON KEDEM
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the charter of the Federal National Mortgage Association (Fannie Mae), which authorizes Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), confers original jurisdiction on federal courts over all cases to which Fannie Mae is a party.

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In the Supreme Court of the United States

No. 14-1055

CRYSTAL MONIQUE LIGHTFOOT, ET AL., PETITIONERS

v.

CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

This brief is submitted in response to the order of this Court inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

STATEMENT

1. In 1934, in the midst of the Great Depression, Congress enacted the National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246, to help resuscitate the nation's housing market and protect lenders from mortgage default. The law created the Federal Housing Administration (FHA), which is now a part of the Department of Housing and Urban Development (HUD). The following year, concerns over whether banks could bring suit against FHA led Congress to enact a provision authorizing FHA (and now HUD) "to sue

and be sued in any court of competent jurisdiction, State or Federal." Banking Act of 1935, Pub. L. No. 74-305, Tit. III, § 344(a), 49 Stat. 722 (12 U.S.C. 1702); see *Korman* v. *FHA*, 113 F.2d 743, 746 & n.15 (D.C. 1940).

The National Housing Act also contemplated that FHA would establish independent "national mortgage associations" that would enter the secondary-mortgage market. § 301(a), 48 Stat. 1252. The associations were designed to "promote access to mortgage credit throughout the Nation * * * by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." 12 U.S.C. 1716(4). The National Housing Act authorized such associations "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." § 301(c)(3), 48 Stat. 1253.

The Federal National Mortgage Association (Fannie Mae) was chartered in 1938 as a national mortgage corporation owned entirely by the federal government. In 1954, Congress converted Fannie Mae into a mixed-ownership corporation, meaning that the federal government held its preferred stock and private investors held its common stock. Housing Act of 1954, Pub. L. No. 83-560, § 303, 68 Stat. 613-615; see Pet. App. 34a. Congress also amended Fannie Mae's charter to provide that Fannie Mae could sue and be sued "in any court *of competent jurisdiction*, State or Federal." § 309(a), 68 Stat. 620 (emphasis added). That change rendered the language in Fannie Mae's charter identical to the language that applied to FHA. Compare 12 U.S.C. 1723a(a) (Fannie Mae), with 12 U.S.C. 1702 (FHA).

In 1968, Congress split Fannie Mae into two separate corporations: Fannie Mae and the Government National Mortgage Association (Ginnie Mae). See Housing and Urban Development Act of 1968, Pub. L. No. 90-448, Tit. VII, 82 Stat. 536. Fannie Mae, which was converted into a privately held corporation, purchases conventional mortgages; Ginnie Mae, which is wholly owned by the government and housed within HUD, guaranties the timely payment of principal and interest on mortgage-backed securities that are secured by pools of government home loans. Ginnie Mae's sue-and-be-sued clause is the same as Fannie Mae's. See 12 U.S.C. 1723a(a).

2. a. In July 2002, following foreclosure on their home, petitioners filed suit in state court against respondents Cendant Mortgage Corporation (which had financed the mortgage), Fannie Mae (which had purchased the loan but then sold it back to Cendant), Attorneys Equity National Corporation (which had become trustee for the property), and Robert Matthews (the current property owner). Fannie Mae removed the case to the United States District Court for the Central District of California on the basis of its sue-and-be-sued clause, Pet. App. 45a-49a, and petitioners unsuccessfully sought a remand to state court, *id.* at 43a-44a. Petitioners then filed an appeal, but the Ninth Circuit noted that "the order challenged in the appeal is not final or appealable." 02-56586 Order (Oct. 11, 2002).

In February 2003, the district court dismissed the suit as to Cendant, Fannie Mae, and Matthews—but not Attorneys Equity—on the basis of res judicata because petitioners had already filed two suits unsuccessfully challenging the foreclosure. D. Ct. Doc. 59

(Feb. 20, 2003).[1] Petitioners filed a notice of appeal, but the Ninth Circuit dismissed the appeal "because the order challenged in the appeal is not final or appealable." 03-55389 Order (Apr. 11, 2003).

In the district court, petitioners moved unsuccessfully to set aside the judgment as to Cendant, Fannie Mae, and Matthews; they also moved unsuccessfully for a default judgment against Attorneys Equity. D. Ct. Doc. 78, 79 (Aug. 29, 2003). Petitioners appealed from the denials of both motions, and this time the Ninth Circuit summarily affirmed the district court's judgment without receiving a response brief and without discussing whether the judgment being appealed was final. 03-56580 Mem. (Dec. 15, 2003). Petitioners filed a petition for a writ of certiorari, which this Court denied. 543 U.S. 918.

b. After an unsuccessful mandamus petition in the court of appeals, see 08-73461 Order (Nov. 3, 2008), petitioners returned to the district court, where they sought to restore the case to the court's active calendar. Petitioners moved for entry of a final judgment under Federal Rule of Civil Procedure 54, noting that the court had not previously issued a final judgment that included defendant Attorneys Equity. D. Ct. Doc. 92 (Apr. 7, 2009). An attorney who had formerly represented Attorneys Equity explained that the corporation had become defunct. D. Ct. Doc. 97, at 2 (May 18, 2009).

In October 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews on the basis of its prior order granting their motions to dismiss; the court did not enter judgment with

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[1] All district court docket references are to Case No. 02-cv-6568 (C.D. Cal. filed Aug. 22, 2002).

respect to Attorneys Equity. D. Ct. Doc. 99 (Oct. 21, 2009). Petitioners then filed another mandamus petition in the Ninth Circuit, asking the court of appeals to direct the district court to enter judgment with respect to Attorneys Equity. The Ninth Circuit denied the petition "without prejudice to the filing of a new petition if the district court has not entered a final judgment with respect to defendant Attorneys Equity National Corporation within 60 days." 09-74079 Order (Apr. 14, 2010).

c. Once again, petitioners returned to the district court. In June 2010, the court issued an order dismissing the action with prejudice against Attorneys Equity on the basis of res judicata, D. Ct. Doc. 103 (June 11, 2010), and it entered judgment the same day, D. Ct. Doc. 104. Also that same day, petitioners moved under Rule 60(b) to set aside the judgments—which by now had been granted in favor of all defendants—based on allegations of "fraud upon the court." D. Ct. Doc. 105. The court denied the motion, finding it untimely as to Cendant, Fannie Mae, and Matthews, and without merit as to all defendants. D. Ct. Doc. 117 (Sept. 27, 2010).

On appeal, the Ninth Circuit summarily affirmed the district court's judgment dismissing petitioners' action and denying their Rule 60(b) motion. 465 Fed. Appx. 668. Petitioners moved for rehearing, and in April 2012 the court of appeals *sua sponte* withdrew its prior opinion (and denied the rehearing petition as moot). The court appointed counsel for petitioners and requested briefing on the question "whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National

Mortgage Association." 10-56068 Order (Apr. 13, 2012).

3. After further briefing and oral argument, a divided panel of the Ninth Circuit affirmed the district court's judgment. Pet. App. 3a-40a.

The court of appeals held that the sue-and-be-sued clause in Fannie Mae's charter "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a. For that conclusion, the court relied primarily on this Court's decision in *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992) (*Red Cross*), which addressed a similar question with respect to the Red Cross's sue-and-be-sued clause. That clause authorizes suit by or against the Red Cross "in courts of law and equity, State or Federal, within the jurisdiction of the United States." 36 U.S.C. 2. Drawing on its own prior opinions stretching back to 1809, the Court concluded in *Red Cross* that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255. Applying *Red Cross* to petitioners' suit, the court of appeals held that Fannie Mae's sue-and-be-sued clause, which also mentions the federal courts, similarly provides an independent basis for federal jurisdiction.

Petitioners argued that a different result was warranted because Fannie Mae's sue-and-be-sued clause, unlike that of the Red Cross, refers to "any court *of competent jurisdiction*, State or Federal." The court of appeals rejected that contention. The court noted that the italicized phrase was added to the clause in 1954, and it found no indication that Congress intended to strip previously conferred jurisdiction over suits

by or against Fannie Mae. Pet. App. 8a-11a. The court rejected the argument that its "holding render[ed] superfluous the phrase 'court of competent jurisdiction.'" *Id.* at 12a. It reasoned that the phrase "can easily be read" to "emphasize that the clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction." *Id.* at 12a-13a. Finally, having concluded that "the sue-and-be-sued clause in Fannie Mae's federal charter confers federal question jurisdiction over suits in which Fannie Mae is a party," the court of appeals affirmed the district court's dismissal of petitioners' claims "for the reasons stated in our previous unpublished disposition." *Id.* at 21a.

Judge Stein, sitting by designation, dissented. Pet. App. 21a-40a. Describing the rule articulated in *Red Cross* as a "default," *id.* at 25a, Judge Stein concluded that the "'of competent jurisdiction' proviso" in Fannie Mae's sue-and-be-sued clause "requires an alternative basis of jurisdiction," *id.* at 27a. Judge Stein also observed that "the non-jurisdictional reading of the 1954 sue-and-be-sued clause meshes comfortably with Congress' overall intention when enacting the Housing Act of 1954," which was "to put Fannie Mae on a path that would eventually take the federal government out of the secondary mortgage market." *Id.* at 35a-36a. Judge Stein explained that, "[a]s part of this process, Congress removed Fannie Mae's jurisdiction-granting sue-and-be-sued clause and elected the default option for federally chartered corporations—that they do not automatically gain access to the federal courts, unless the government owns more than half of the corporation's capital stock." *Id.* at 36a. Judge Stein pointed as well to a separate provi-

sion, added in 1974, specifying that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." *Id.* at 38a (quoting 12 U.S.C. 1717(a)(2)(B)). Judge Stein reasoned that, if Congress had intended for Fannie Mae's charter to confer federal jurisdiction in all suits, there would have been no need to give Fannie Mae D.C. citizenship for purposes of diversity jurisdiction. *Ibid.*

DISCUSSION

Fannie Mae's charter provides that it may sue or be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Contrary to the decision below, that provision does not confer on federal courts original jurisdiction over all cases to which Fannie Mae is a party. Because of the importance of the question, the substantial uncertainty that it has created in the lower courts, and the frequency with which it arises, this Court should grant the petition for a writ of certiorari.

A. Fannie Mae's Charter Does Not Provide District Courts With Original Jurisdiction Of Suits Brought By Or Against Fannie Mae

1. a. Congress has given the federal district courts original jurisdiction of suits brought by federal agencies, 28 U.S.C. 1345, and has authorized federal agencies to remove to federal court suits that are filed in state court, 28 U.S.C. 1442(a)(1). Congress has further provided that certain federally created entities, such as the Federal Home Loan Mortgage Corporation (Freddie Mac), shall be deemed to be federal agencies for jurisdictional and removal purposes. 12 U.S.C. 1452(f). Pursuant to such provisions, many federally

created entities may insist that suits brought by or against themselves will be adjudicated in federal court, even when those suits assert state rather than federal causes of action.

In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), this Court held that Congress's grant of jurisdiction to district courts in suits "arising under" federal law encompassed all suits by or against federally chartered entities. *Id.* at 11. Such entities were therefore entitled to file a suit in, or to remove a state-court suit to, federal court on the theory that the suit arose under the laws of the United States. In 1925, however, Congress limited the scope of "arising under" jurisdiction by providing that district courts would not "have jurisdiction of any [civil] action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, * * * [unless] the United States is the owner of more than one-half of its capital stock." Act of Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941 (codified at 28 U.S.C. 1349).

Congress has not authorized Fannie Mae to invoke Section 1345 to bring suit in federal court or Section 1442 to remove suits filed in state court. Fannie Mae's status as a federally chartered entity likewise does not provide an independent ground for federal jurisdiction because the government does not own more than one-half of Fannie Mae's capital stock. See 28 U.S.C. 1349. Federal jurisdiction in this suit therefore turns on whether Fannie Mae's charter provides an independent source of federal jurisdiction.

b. This Court has long recognized that Congress may use a federally chartered entity's sue-and-be-sued clause to create federal jurisdiction. In *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738

(1824), the Court held that a clause allowing the Bank of the United States to sue and be sued "in any Circuit Court of the United States" conferred federal jurisdiction. *Id.* at 817-818. In *Bankers Trust Co.* v. *Texas & Pacific Railway*, 241 U.S. 295 (1916), by contrast, the Court held that a federal charter permitting a railroad to sue and be sued "in all courts of law and equity within the United States" did not confer federal jurisdiction because it did not specifically mention the federal courts. *Id.* at 303-305 (citation omitted). And in *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corporation*, 315 U.S. 447 (1942), the Court recognized jurisdiction based on an authorization to sue or be sued "in any court of law or equity, State or Federal." *Id.* at 455 (citation omitted).

In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992) (*Red Cross*), the Court synthesized those decisions and others to arrive at the following principle: "[A] congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. At issue there was a clause that authorized the Red Cross "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Id.* at 248 (quoting Act of Jan. 5, 1905, Pub. L. No. 58-4, 33 Stat. 600 (as amended at 36 U.S.C. 2)). Because the Red Cross's charter "authoriz[ed] the organization to sue and be sued in federal courts, using language resulting in a 'sue and be sued' provision in all relevant respects identical to" the provision found to confer federal jurisdiction in *D'Oench, Duhme*, the Court held that the charter "suffice[d] to confer federal jurisdiction." *Id.* at 257.

2. Fannie Mae's charter authorizes it to sue and be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Although it mentions the federal courts, that provision differs in a critical respect from the language at issue in *Red Cross* by limiting its authorization to courts "of competent jurisdiction." That phrase suggests that the charter does not provide an independent basis for federal (or state) jurisdiction, but simply authorizes Fannie Mae to sue or be sued in any court for which some *other* jurisdictional basis exists. Cf. *Califano* v. *Sanders*, 430 U.S. 99, 106 n.6 (1977) (explaining that 5 U.S.C. 703, which authorizes judicial review "in a court specified by statute" or "in a court of competent jurisdiction," does not appear to function "as an independent jurisdictional foundation," since "[b]oth of those clauses seem to look to outside sources of jurisdictional authority"). To construe Fannie Mae's sue-and-be-sued clause more expansively would deprive the phrase "of competent jurisdiction" of its most natural meaning.

The court below reasoned that the phrase "of competent jurisdiction" would not become "superfluous" under its own interpretation because the phrase can be read as "emphasiz[ing] that the [sue-and-be-sued] clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction." Pet. App. 12a-13a; see *id.* at 13a-14a ("The phrase makes clear that state courts of specialized jurisdiction—such as family courts and small-claims courts—need not entertain suits that do not satisfy those courts' jurisdictional requirements."). That argument would be persuasive only if a sue-and-be-sued clause *without* that phrase could plausibly be read to create jurisdiction in spe-

cialized state or federal courts. As explained above, however, the phrase "of competent jurisdiction" does not appear in the charters of the Red Cross or a number of other federally created entities. The Court in *Red Cross* did not suggest, and it is farfetched to suppose, that suits by or against such entities can be brought in specialized state or federal courts without regard to the jurisdictional prerequisites that would otherwise apply. See *Red Cross*, 505 U.S. at 267-268 (Scalia, J., dissenting). There is accordingly no reason to believe that inclusion of the phrase "of competent jurisdiction" in Fannie Mae's charter was thought necessary to avoid that result.[2]

The conclusion that Fannie Mae's charter does not itself create federal jurisdiction is reinforced by Congress's addition, in 1974, of a provision specifying that

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[2] For its contrary conclusion, the court of appeals relied on *Testa* v. *Katt*, 330 U.S. 386 (1947). See Pet. App. 13a-14a. The Court in *Testa* addressed whether Rhode Island's courts had permissibly declined to entertain a private suit under the federal Emergency Price Control Act, which gave state and federal courts concurrent jurisdiction over such suits, and which authorized certain private parties to sue "in any court of competent jurisdiction." 330 U.S. at 387 & n.1. Noting that "this same type of claim arising under Rhode Island law would be enforced by that State's courts," this Court held that Rhode Island's courts could not decline to hear the suit merely because of its federal nature. *Id.* at 394. Nothing in *Testa* suggests, however, that specialized state courts (such as the family and small-claims courts to which the Ninth Circuit in this case referred) would have been required to entertain suits under the Emergency Price Control Act if that law had not contained the phrase "of competent jurisdiction." Cf. *Howlett* v. *Rose*, 496 U.S. 356, 372 (1990) ("When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, [this Court] must act with utmost caution before deciding that it is obligated to entertain the claim."); *id.* at 372-375.

Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Act of Aug. 22, 1974, Pub. L. No. 93-383, Tit. VIII, § 806(b), 88 Stat. 727 (codified at 12 U.S.C. 1717(a)(2)(B)). That provision is most naturally read to refer both to personal and to subject-matter jurisdiction. See 28 U.S.C. 1332(c)(1) (diversity and removal jurisdiction based on corporate citizenship). As Judge Stein noted, however, "Fannie Mae would have no use for diversity jurisdiction if it could enter the federal courts pursuant to its sue-and-be-sued clause." Pet. App. 39a. When it added that language, moreover, Congress did not make a similar change to Ginnie Mae's charter. The most reasonable inference is that Congress did not view such a change as necessary because Ginnie Mae, unlike Fannie Mae, already "had plenary access to the federal courts as an agency of the federal government." *Ibid.*

3. In construing Fannie Mae's sue-and-be-sued clause as a font of original jurisdiction, the court of appeals relied primarily on what it described as a "clear rule" articulated in *Red Cross*: "that 'a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts.'" Pet. App. 5a (quoting 505 U.S. at 255). The court also noted that, until 1954, Fannie Mae's charter had contained language functionally identical to the language held to be jurisdiction-creating in *Red Cross*. *Id.* at 8a (explaining that the pre-1954 statute authorized Fannie Mae to "sue and be sued; complain and defend, in any court of law or equity, State or Federal") (emphasis and citation omitted). The court concluded that, when Congress amended that language to its present

form, "[t]here is no indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase 'court of law or equity' with the phrase 'court of competent jurisdiction.'" *Id.* at 9a.

The court of appeals' analysis is unpersuasive. In holding that a sue-and-be-sued clause "*may* be read to confer federal court jurisdiction if * * * it specifically mentions the federal courts," 505 U.S. at 255 (emphasis added), the Court in *Red Cross* did not suggest that an express reference to federal courts in such a clause will *always* carry that meaning. See *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust* v. *Raines*, 534 F.3d 779, 796 (D.C. Cir. 2008) (*Pirelli*) (Brown, J., concurring) (discussing this language in *Red Cross* and explaining that the word "may" is generally permissive rather than mandatory). A hypothetical clause providing that "Fannie Mae may sue and be sued in federal court *only if* another statute independently confers subject-matter jurisdiction," for example, could not plausibly be read as an independent jurisdictional grant, even though it specifically mentions federal courts. See *id.* at 795. Rather, the pertinent language in *Red Cross* simply makes clear that "mentioning federal courts is necessary, but not always sufficient, to confer jurisdiction." *Ibid.*

The holding of *Red Cross* thus is best understood as a "default rule" under which a sue-and-be-sued clause may be read to confer jurisdiction under certain circumstances, rather than a "magic-words test" that applies whenever "the word 'federal'" appears. Pet. App. 25a (Stein, J., dissenting). Rather than treating the mere mention of federal courts as dispositive, the Court in *Red Cross* relied heavily on the fact that the sue-and-be-sued clause at issue there was "in all

relevant respects identical to one on which [the Court had] based a holding of federal jurisdiction" in *D'Oench, Duhme*. 505 U.S. at 257. Fannie Mae's sue-and-be-sued clause is not "in all relevant respects identical" to the clauses at issue in *Red Cross* and *D'Oench, Duhme*, because it authorizes suit only in courts "of competent jurisdiction."

The Court in *Red Cross* also noted that Congress had amended the Red Cross's charter to its present form in 1947, five years after the ruling in *D'Oench, Duhme*. 505 U.S. at 260. The Court viewed that sequence of events as "indicat[ing] that Congress may well have relied on that holding to infer that amendment of the Red Cross Charter's 'sue and be sued' provision to make it identical to the [one construed in *D'Oench, Duhme*] would suffice to confer federal jurisdiction." *Ibid.* No similar inference can be drawn in this case. To the contrary, in 1954, Congress amended Fannie Mae's sue-and-be-sued clause by *eliminating* language identical to that construed in *D'Oench, Duhme* ("any court of law or equity, State or Federal") and replacing it with substantively different language ("any court of competent jurisdiction, State or Federal").

As the court below observed, the legislative history is largely "silen[t]" about Congress's reasons for the 1954 amendment to Fannie Mae's sue-and-be-sued clause. Pet. App. 10a. The court surmised that, "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or Senate to have said something if they intended a change of that sort." *Ibid.* The court failed, however, to grapple with the fact that the 1954 change to the sue-and-be-

sued clause was part of a larger statute that fundamentally transformed Fannie Mae's relationship to the federal government by converting it to a mixed-ownership corporation and providing "for the eventual substitution of private capital for Government investment in its secondary market operations." H.R. Rep. No. 1429, 83d Cong., 2d Sess. 18 (1954); see Pet. App. 34a (Stein, J., dissenting); p. 2, *supra*.

During the period from 1938 until 1954, when Fannie Mae was wholly owned by the federal government, 28 U.S.C. 1349 (and its statutory predecessor) conferred federal jurisdiction over suits by and against the corporation. Assuming that the pre-1954 version of the sue-and-be-sued clause was a grant of federal jurisdiction over suits brought by or against Fannie Mae, the practical effect of that clause was simply to duplicate the conferral of jurisdiction that Section 1349 then provided. After Congress adopted the present sue-and-be-sued language as part of the 1954 amendments, the government's ownership of Fannie Mae temporarily continued to exceed one-half, and Section 1349 therefore continued to provide an independent source of federal jurisdiction for suits by and against the corporation. See Pet. App. 36a (Stein, J., dissenting). Congress expected and intended, however, that majority ownership of Fannie Mae would eventually pass to private hands. See *ibid.*

Under the general rule established by Section 1349, that change in ownership would mean that suits involving Fannie Mae could thenceforth be brought in federal court only if some independent ground of federal jurisdiction existed. The absence of legislative history specifically noting that jurisdictional consequence of Fannie Mae's anticipated privatization pro-

vides no basis for declining to give the phrase "of competent jurisdiction" its natural meaning. And construing the contemporaneous change to the sue-and-be-sued clause in the manner that petitioners and the dissenting judge below have advocated, so that Fannie Mae would continue to be governed by the jurisdictional rule (see 28 U.S.C. 1349) that applies to federally chartered corporations generally, is wholly consistent with the overall thrust of the 1954 amendments. See Pet. App. 37a (Stein, J., dissenting) (explaining that the 1954 Congress intended "to place the government and Fannie Mae on paths that would ultimately diverge," and that "[t]he amendment to Fannie Mae's sue-and-be-sued clause was part and parcel of this overarching intendment").

B. The Question Presented Has Generated Substantial Confusion In The Lower Courts

Respondents are correct that no split among the courts of appeals exists with respect to the jurisdictional nature of Fannie Mae's sue-and-be-sued clause. Like the Ninth Circuit below, the District of Columbia Circuit has ruled that Fannie Mae's charter confers federal jurisdiction. See *Pirelli*, 534 F.3d at 784-788. Judge Brown sharply disagreed with that conclusion, see *id.* at 795-800, although her opinion was styled a concurrence because the majority affirmed the district court's dismissal of the complaint on the merits.

The courts of appeals have divided, however, on the proper interpretation of functionally identical language in the sue-and-be-sued clauses of other federally chartered entities. In *Western Securities Co.* v. *Derwinski*, 937 F.2d 1276 (1991), the Seventh Circuit held that a provision authorizing the Administrator of the Department of Veterans Affairs (DVA) to "sue or

be sued in any court, state or federal, of competent jurisdiction * * * emphatically does not mean that [suit] could have been filed in federal district court," because the clause "is not a grant of jurisdiction." *Id.* at 1279. Other courts of appeals have reached the same conclusion in construing similar provisions. See *C.H. Sanders Co.* v. *BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990) (holding that provision authorizing Secretary of HUD to "sue and be sued in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1702, was "only a waiver of sovereign immunity and not an independent grant of jurisdiction"); *Lomas & Nettleton Co.* v. *Pierce*, 636 F.2d 971, 972-973 (5th Cir. 1981) (similar); *Lindy* v. *Lynn*, 501 F.2d 1367, 1368 (3d Cir. 1974) (similar); see also *Bor-Son Bldg. Corp.* v. *Heller*, 572 F.2d 174, 181 (8th Cir. 1978) (dicta). By contrast, the First Circuit recently held that a sue-and-be-sued clause applicable to the Federal Home Loan Bank of Boston, which authorizes the bank "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1432(a), constitutes an independent grant of federal jurisdiction. See *Federal Home Loan Bank* v. *Moody's Corp.*, No. 14-2148 (May 2, 2016), slip op. 9-16. The First Circuit agreed with the Ninth Circuit's holding in this case that Congress's inclusion of the phrase "of competent jurisdiction" did not justify construing the bank's sue-and-be-sued clause differently from the Red Cross's. See *id.* at 15.

As respondents note (Br. 26), the court of appeals decisions that have declined to find jurisdiction under sue-and-be-sued clauses like Fannie Mae's, which both mention the federal courts and contain the phrase "of competent jurisdiction," were issued before this

Court's decision in *Red Cross*. For the reasons stated above, however, *Red Cross* does not control the outcome here. See pp. 13-15, *supra*. In any event, although the absence of a circuit conflict ordinarily weighs strongly against a grant of certiorari, the nature of the question presented here would justify a departure from that general practice. When suit is brought against Fannie Mae in state court and removed to federal court, a district court's decision to remand for lack of jurisdiction typically "is not reviewable on appeal or otherwise." 28 U.S.C. 1447(d). As a result, many district court decisions declining to find jurisdiction in these circumstances have evaded appellate review, including in a number of cases decided since *Red Cross*. See Pet. 19-20 (citing cases). Indeed, Fannie Mae itself has successfully obtained remands to state courts in several cases by asserting a view of its sue-and-be-sued clause that is inconsistent with its position in this Court. See Pet. Reply Br. 8-9.

Given the division of authority described above; the significant inconsistency in the treatment of this issue both by courts and by litigants; the large number of suits in which Fannie Mae is a party, see Pet. Reply Br. 10; and the importance of the issue to Fannie Mae and other federally chartered entities,[3] this Court's review is warranted.

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[3] As noted, see pp. 1-3, 17-18, *supra*, similar sue-and-be-sued clauses apply to HUD, DVA, and Ginnie Mae. See 12 U.S.C. 1702 (suits against FHA under National Housing Act); 12 U.S.C. 1723a(a) (Ginnie Mae); 38 U.S.C. 3720(a)(1) (suits against DVA for certain veterans' benefits). Although all three of those entities are authorized by statute to bring suit in federal court, see 28 U.S.C. 1345, and to remove suits filed in state court, see 28 U.S.C. 1442(a), resolution of the question presented would determine whether

C. The Complex Procedural History Of This Case Should Not Dissuade The Court From Granting The Petition

When the Ninth Circuit asked for supplemental briefing as to whether the district court had subject-matter jurisdiction, Fannie Mae likely could have raised a defense of res judicata to prevent relitigation of that issue. That fact should not dissuade the Court from granting the petition, however, because any such argument has been forfeited.

1. Res judicata generally prevents a court from revisiting an issue that the parties have had a full and fair opportunity to litigate to final judgment. See 18A Charles Alan Wright et al., *Federal Practice and Procedure* § 4402 (2d ed. 2002) (Wright & Miller). In this case, the issue of subject-matter jurisdiction was litigated from the outset. Fannie Mae cited its sue-and-be-sued clause as a basis for removing the case to federal court, see Pet. App. 47a; petitioners sought a remand, arguing that the district court lacked jurisdiction, see D. Ct. Doc. 11, at 2 (Aug. 26, 2002) ("Fannie Mae's federal charter does not confer automatic federal question jurisdiction.") (capitalization altered); and the district court denied the remand request without explanation, see Pet. App. 43a-44a. When the court later dismissed petitioners' claims against Fannie Mae, the court stated that its jurisdiction over the case was "based upon" Fannie Mae's sue-and-be-sued clause. See D. Ct. Doc. 59, at 2. Petitioners then appealed to the Ninth Circuit, where they argued that removal was improper due to the lack of diversity or a federal question. See 03-56580 Resp. to Order to

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private litigants may commence suit against them in federal court based on state-law causes of action.

Show Cause, 4-5 (Nov. 10, 2003). The Ninth Circuit summarily affirmed the district court's judgment without mentioning the jurisdictional issue, see 03-56580 Mem., and petitioners unsuccessfully sought this Court's review, see 543 U.S. 918.

At that point, the district court's judgment "became res judicata to the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Travelers Indem. Co.* v. *Bailey*, 557 U.S. 137, 152 (2009) (citation and internal quotation marks omitted). The res judicata bar precludes a litigant from filing a new suit in order to raise an issue that was litigated or could have been litigated in a prior suit, see Wright & Miller § 4402, or from seeking under Rule 60(b) to reopen a prior judgment that has become final, see *id.* § 4428. Res judicata generally prevents relitigation even of challenges to the first court's subject-matter jurisdiction. See *Travelers*, 557 U.S. at 152-153. Because petitioners had a full and fair opportunity to contest the district court's jurisdiction over their claims against Fannie Mae, that issue became res judicata when this Court denied certiorari in 2004.

2. This Court need not address or resolve the res judicata issue in order to reach the question presented here, however, because res judicata is a defense that generally may be forfeited. See Wright & Miller § 4405 ("The fundamental premise of the requirement that preclusion be pleaded and proved is that a party entitled to demand preclusion is also entitled to waive it. Express waiver is accepted, and a preclusion argument may be abandoned after it is initially raised.")

(footnotes omitted). In April 2012, when the Ninth Circuit called for briefing on the issue of the district court's subject-matter jurisdiction, Fannie Mae could have argued that the issue had become res judicata, but it apparently did not do so. Fannie Mae also has not raised a res judicata defense in opposing certiorari. The question whether Fannie Mae's sue-and-be-sued clause provides an independent ground of federal jurisdiction therefore is properly before this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM STEWART
Deputy Solicitor General
ALLON KEDEM
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

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IN THE

Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, *et al.*,
Petitioners,

v.

CENDANT MORTGAGE CORPORATION
d/b/a PHH MORTGAGE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONERS

Lisa Blue
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street N.W.
Suite 200
Washington, DC 20001
(202) 965-3500

Jeffrey R. White
Counsel of Record
CENTER FOR CONSTITUTIONAL LITIGATION, P.C.
777 6th Street N.W.
Suite 520
Washington, DC 20001
(202) 944-2839
jeffrey.white@cclfirm.com
Attorney for Amicus Curiae

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Association for Justice ("AAJ") respectfully submits this brief as amicus curiae in support of the Petition for Certiorari in this case.[1] AAJ is a voluntary national bar association whose members primarily represent plaintiffs in personal injury and wrongful death suits, as well as plaintiffs in civil rights, employment rights, and consumer rights actions.

Some clients of AAJ members have state law causes of action against federally chartered corporations and seek to pursue those claims in state courts. AAJ is concerned the lower court's decision in this case will allow federally chartered defendants to override the plaintiff's choice of the state court forum based on the federal charter with little or no evidence that Congress actually intended that result. The uncertainty that is evident in the decisions of federal district courts concerning the correct standard for ascertaining that the court has subject matter jurisdiction makes representation of clients more difficult and adds unnecessary complexity and expense to the vindication of state law rights.

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[1] Timely notice of intent to file this *amicus curiae* brief was provided to counsel for all parties, pursuant to Supreme Court Rule 37.2. All parties have consented to the filing of this *amicus curiae* brief, and copies of the emails granting consent have been filed with the Clerk. The undersigned counsel for *amicus curiae* affirms, pursuant to Supreme Court Rule 37.6, that no counsel for a party authored this brief in whole or in part and no person or entity other than AAJ, its members, and its counsel contributed monetarily to the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

1. A federal court's application of the correct standard for determining subject matter jurisdiction is a matter of fundamental importance. Jurisdiction is the source of the court's authority and respect for its boundaries keeps the court within constitutional and statutory limits.

A congressional charter that merely authorizes the corporation to sue and be sued in any court does not expand the jurisdiction of any court, though Congress can use such a provision to confer federal jurisdiction over state law claims if it so intends. The Ninth Circuit found such jurisdiction based almost entirely on the provision in its congressional charter authorizing it to sue and be sued "in any court of competent jurisdiction, State or Federal."

The Ninth Circuit discerned in this Court's decision in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), a bright-line rule that such specific mention of federal courts was sufficient to create federal jurisdiction, without clear evidence that Congress so intended. This Court should grant the Petition to address the broader question of whether congressional intent to confer subject matter jurisdiction over state law claims can be reliably gleaned from such oblique text.

Congressionally chartered corporations are many and diverse. The 100 or so such entities range from Government Sponsored Enterprises that perform quasi-governmental functions, to those that behave much like private corporations providing goods and services to the public, to charitable organizations that engage in no governmental activity

at all. It is unlikely that Congress would have consistently used the oblique textual formulation relied upon below as the sole indicator of congressional intent to create federal jurisdiction to decide purely state law causes of action.

2. The Ninth Circuit's decision is not consistent with the precedents of this Court, on which the court below relied. In *Red Cross*, 505 U.S. 247, this Court held that a federal charter that specifically names federal courts *may* confer federal subject matter jurisdiction; this Court did not hold that such language by itself is sufficient to do so.

The Ninth Circuit also erred in relying on *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), for its liberal construction of the charter text in favor of broad federal jurisdiction. *Osborn* was decided in the absence of statutory authorization for general federal question jurisdiction at a time when the national bank faced hostile state governments and was in need of a federal forum for its litigation. Fannie Mae faces only state law claims by private citizens. Moreover, after Congress enacted federal question jurisdiction in 1875, Congress acted to eliminate *Osborn*'s broad rule creating federal jurisdiction in any case in which a congressionally chartered corporation is a party. In addition, Congress has made frequent use of plain and direct language in corporate charters to create federal jurisdiction, making the lower court's inference from mere mention of federal courts less reasonable.

3. The broad, automatic rule of broad federal jurisdiction for congressionally chartered corporations is also inconsistent with the role of federal courts in our system of federalism. Federal

courts are courts of limited jurisdiction. Civil actions are presumed to lie outside the subject matter jurisdiction of the federal courts unless and until the party asserting jurisdiction carries the burden of establishing it. The rule applied by the Ninth Circuit allows the federal court to find jurisdiction by implication from the text of the charter without clear indication that Congress intended to allow federal courts to adjudicate state law claims against the corporation. Such broad jurisdiction adds to the workload of the federal courts and diverts judicial resources to state law disputes in which they have no particular expertise.

Opening federal courts to such cases also undermines the role of state courts. It is the responsibility of state courts to apply and develop state law. Undue expansion of federal jurisdiction over state law cases places that responsibility in the hands of a federal judiciary that is not accountable to the citizens of the state. To avoid such undue enlargement of federal jurisdiction, this Court should grant the Petition to make clear that conferring of jurisdiction over state law claims must be supported by a plain statement clearly indicating that Congress intended that result.

ARGUMENT

I. Whether the Lower Court Correctly Determined That It Had Subject Matter Jurisdiction Over State Law Claims Against the Federally Chartered Defendant Is a Question of Great Importance That Should Be Resolved By This Court.

A. Application of the correct standard for determining federal jurisdiction over purely state law claims based on the content of defendant's Congressional charter is an unsettled question that should be resolved by this Court.

It is beyond dispute that the inquiry by a federal court into its own subject matter jurisdiction is a matter of fundamental importance. "Jurisdiction is power to declare the law," and without it, "the court cannot proceed at all in any cause." *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)). "For a court to pronounce upon the [merits] when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Id.* at 101-02. Subject matter jurisdiction, along with personal jurisdiction, are the "jurisdictional bedrocks" that "keep the federal courts within the bounds the Constitution and Congress have prescribed." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

For that reason, the question of subject matter jurisdiction is one that "the court is bound to ask and answer for itself, even when not otherwise suggested."

Steel Co., 523 U.S. at 94-95. The requirement that jurisdiction be established as a threshold matter "is inflexible and without exception." *Id.* at 95 (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

A corporate charter that confers the right to sue and be sued in court creates only the capacity to litigate and does not enlarge the jurisdiction of any court. Fed. R. Civ. P. 17(b). This rule also applies to corporations chartered by Congress. *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809); *Bankers Trust v. Texas & Pacific Ry. Co.*, 241 U.S. 295, 305 (1916). Congressional charters, however, may also confer original jurisdiction over all cases involving the corporation. *Osborn*, 22 U.S. at 817. The question presented in this case is whether the specific mention of "federal" court in the "sue and be sued" provision suffices to create federal jurisdiction over state law claims where there is no other evidence or indication that Congress so intended.

Without doubt, the Federal National Mortgage Association ("Fannie Mae"), is tasked with important work in the national economy. Fannie Mae "is a government-sponsored enterprise (GSE) chartered by the United States Congress to support liquidity and stability in the secondary mortgage market . . . by securitizing mortgage loans originated by lenders in the primary mortgage market." New York Times, Federal National Mortgage Association, *available at* http://topics.nytimes.com/top/news/business/companies/fannie_mae/index.html.

The Petition does not question whether federal courts have jurisdiction over claims regarding those activities, which clearly arise under federal law. This case concerns federal jurisdiction over purely state law claims. *See, e.g.*, *Colarte v. Fed. Nat'l Mortg. Ass'n*, 689 A.2d 869 (N.J. Super. Ct. Law Div. 1996), *overruled on other grounds*, *Briglia v. Mondrian Mortg. Corp.*, 698 A.2d 28 (N.J. Super. Ct. App. Div. 1997) (negligence action under state law by injured pedestrian who fell on a snow-covered sidewalk adjacent to property owned by Fannie Mae). In this case, plaintiffs asserted state-law claims stemming from foreclosure of their real property. *Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681, 682 (9th Cir. 2014).

Nor is it disputed that Congress *can* confer federal subject matter jurisdiction over such claims based on the fact that one party is a federally chartered corporation. The question is whether Congress in fact did so. The Ninth Circuit answered yes, based almost entirely on a charter provision that authorizes Fannie Mae "to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." *Id.* at 683 (quoting 12 U.S.C. § 1723a(a)).

The court below relied heavily on this Court's decision in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), in which the Ninth Circuit discerned a bright line rule:

> In *Red Cross*, the Supreme Court gave us a clear rule for construing sue-and-be-sued clauses for federally chartered corporations. The Court held that "a congressional charter's 'sue and be sued'

> provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts."

769 F.3d at 683 (quoting *Red Cross*, 505 U.S. at 255).

The court below construed "in any court of competent jurisdiction, State or Federal" as expressly extending "beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction." *Id.* at 684 (quoting *Red Cross*, 505 U.S. at 257). The court inquired no further as to whether Congress actually intended that state law claims be brought in federal court. Indeed, the sole reference to legislative intent was to say there was "no indication that Congress intended to eliminate federal question jurisdiction in 1954 . . . Instead, there was silence." *Id.* at 685.

The Petition enumerates the division among federal courts on this issue. The D.C. Circuit has concluded, like the Ninth Circuit, that the Fannie Mae charter creates federal jurisdiction over any suit, including purely state-law actions, brought by or against Fannie Mae. *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008). Numerous federal district courts have arrived at contradictory conclusions. *See* Pet. 18-20 (collecting cases).

Amicus agrees that this Court should grant the Petition in order to resolve the differences among federal courts. Amicus would also call to this Court's attention the broader issue presented by the Ninth Circuit's use of the word "federal" in a talismanic fashion to automatically create federal subject matter

jurisdiction. Federally chartered corporations are a numerous and diverse group whose activities may be quasi-governmental or not related to governmental responsibilities at all. It is unlikely that Congress used this fairly general term with precisely the same meaning in their various charters. The lower court's reliance on a single word or phrase in the charter without clear evidence that Congress intended to expand federal jurisdiction over state law claims will affect litigants far beyond the parties to this case.

B. Federally chartered entities are many and diverse.

The position of federally chartered corporations may be viewed as "exceptional" and deserving of their own rules with respect to access to federal courts. *Gully v. First Nat'l Bank*, 299 U.S. 109, 114 (1936). There are well over 100 such entities, including such large and vitally important corporations, like Fannie Mae, as well as others that engage in no governmental activities at all. Lorretta Shaw, *A Comprehensive Theory of Protective Jurisdiction: The Missing "Ingredient" of "Arising Under" Jurisdiction*, 61 Fordham L. Rev. 1235, 1237 (1993).

A Congressional Research Service study charts the wide diversity of activities of federally chartered corporations. *See* Kevin R. Kosar, Congressional Research Service, *Congressional or Federal Charters: Overview and Enduring Issues*, at 3 (Apr. 19, 2013), *available at* https://www.fas.org/sgp/crs/misc/RS22230.pdf. They include seven "highly controversial Government Sponsored Enterprises (GSEs), including Fannie Mae and Freddie Mac. Though purportedly private entities, these corporations were formed to perform governmental or

quasi-governmental functions." Paul E. Lund, *Federally Chartered Corporations and Federal Jurisdiction*, 36 Fla. St. U. L. Rev. 317, 324 (2009); *see* 12 U.S.C. §§ 4501-4642 (detailing the powers of GSEs).

There are, in addition, government chartered corporations that are wholly or partially owned by the federal government. *See* 31 U.S.C. § 9101 (listing 28 such "government corporations"). In *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995), this Court reviewed in detail "the long history of corporations created and participated in by the United States for the achievement of governmental objectives" beginning with the first and second national banks. *Id.* at 386. This Court's description reveals that even this subset of federally chartered corporations range from those that are deemed to be federal government agencies, such as the Federal Deposit Insurance Corp., to non-agencies that are nonetheless "government entities" for purposes of individual constitutional rights, such as Amtrak, and those that operate most like private corporations providing goods and services to the public, such as the Tennessee Valley Authority. *See Lebron*, 513 U.S. at 387-91 & 399; and *see generally*, A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. Ill. L. Rev. 543, 555-57 (1995).

In addition, Title 36 of the United States Code includes the charters of over 100 charitable and non-profit organizations, including the American Red Cross and the Little League. *See* 36 U.S.C. §§ 10101-240112. *See generally* Kevin R. Kosar, Congressional Research Service, *Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations")*:

What They Are and How Congress Treats Them (July 14, 2008).

It is also likely that the number and types of federally chartered corporations will continue to expand. There has been discussion "regarding the federal chartering of insurance companies and agencies, and legislation to provide for such chartering has been introduced in both houses." Lund, *supra*, at 325. Proposals have also been made for federal chartering of securities firms and financial services firms, which would be "functionally identical to the comparable state corporations with which they compete for business and investment." *Id.*

It is unlikely that Congress, in chartering so many corporations with such widely varied governmental involvement employed a consistent, yet oblique textual formula to signal its intent to create a right of access to federal courts to decide purely state law causes of action in which there is no diversity.

Amicus submits that the appropriate standard for ascertaining federal jurisdiction in such cases is "an important question of federal law that has not been, but should be, settled by this Court," or, alternatively, that the Ninth Circuit decided this important federal question "in a way that conflicts with relevant decisions of this Court." *See* S. Ct. R. 10(c).

II. The Decision Below, That Use of "Federal" in the Congressional Charter Was Sufficient to Create Federal Jurisdiction Over Plaintiffs' State Law Claims, Is Not Consistent With This Court's Decisions.

A. *Red Cross* did not establish a bright-line rule that specific mention of federal courts in the "sue and be sued" provision was sufficient to create federal subject matter jurisdiction with no clear evidence of Congressional intent.

The court below, purporting to follow this Court's lead in *Red Cross*, looked to "a line of cases, stretching back to *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), which stated that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts." *Lightfoot*, 769 F.3d at 683 (citing *Red Cross*, 505 U.S. at 252 and *Osborne*, 22 U.S. (9 Wheat.) at 817-18).

In *Red Cross*, this Court concluded from its comparison of the charters in *Osborn*; *Deveaux*, 9 U.S. at 85; *Bankers' Trust Co.*, 241 U.S. at 304-05; and *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 455 (1942), that "a congressional charter's 'sue and be sued' provision *may* be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255 (emphasis added). In short, this Court found that mention of federal courts is necessary, *but not sufficient* to create federal jurisdiction. The Court then proceeded to inquire whether Congress in fact intended to create federal jurisdiction. *Id.* at 258-64. Although the dissent

asserted that the majority was engaging in "magic words" jurisprudence, *id.* at 265 (Scalia, J., dissenting), the majority was quick to emphasize that the Court's readings of the charters "represented our best efforts at divining congressional intent retrospectively." *Id.* at 252.

The Ninth Circuit, by contrast, held that *Red Cross* established a "rule" that "suffices to confer federal jurisdiction" and resolves this case. *Lightfoot*, 769 F.3d at 684. *See also id.* at 690 (Stein, J., dissenting) (stating that the majority applied a rule of "automatic federal subject matter jurisdiction").

B. *Osborn* does not control this case.

The court below viewed *Osborn* as the seminal decision establishing a bright-line rule "that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts." *Lightfoot*, 769 F.3d at 683.

There is no doubt that Chief Justice John Marshall broadly declared that, because the Bank could only sue as authorized by its congressionally-enacted charter, any such suit "literally, as well as substantially" arises under the laws of the United States for purposes of Article III. 22 U.S. at 823. This Court has recognized that *Osborn* "reflects a broad conception of 'arising under' jurisdiction" that has been questioned. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 492-93 (1983). However, the context of the controversy facing Chief Justice Marshall in *Osborn* has little bearing on the proper scope of federal jurisdiction in this case.

In *Osborn*, the state of Ohio, defying this Court's decision in *M'Culloch v. Maryland*, 17 U.S. (1 Wheat.) 316 (1819), levied a ruinous annual tax on the second National Bank. State officials seized some $100,000 from the Bank's office in Chillicothe, Ohio. 22 U.S. at 832-36. The Bank sued the state officials in federal court, seeking to recover the seized funds and enjoin the collection of the tax, alleging that the seizure violated the federal Constitution. *Id.* at 859-60.

The Bank's cause of action clearly arose under federal law. However, at that time there was no general authorization for federal courts to hear cases arising under federal law. Congress first authorized general federal question jurisdiction in the Judiciary Act of 1875. *See* Act of Mar. 3, 1875, ch. 137, 18 Stat. 470 (codified as amended at 28 U.S.C. § 1331). Yet, the Bank of the United States "was sadly in need of a federal haven for its litigation." Harry Shulman & Edward C. Jaegerman, *Some Jurisdictional Limitations on Federal Procedure*, 45 Yale L.J. 393, 405 (1936). "The Government was interested as an owner in the Bank and the Bank was performing governmental service [but] the Bank was the object of great popular hatred and of measures of reprisal by many state legislatures." *Id.* The Bank was a fledgling federal corporation that "was the subject of much hatred from local populations and state legislatures [and] needed the security of a federal forum." Michael T. Maloan, *Federal Jurisdiction and Practice: The American National Red Cross and the Interpretation of "Sue and Be Sued" Clauses*, 45 Okla. L. Rev. 739, 759 (1992).

Fannie Mae does not face those historical exigencies. The corporation is not facing hostile state

governments eager to use state courts to block the federal government's actions and drain its funds. Fannie Mae faces only state law causes of action by private citizens. There is no compelling reason why a case stemming from a fall on a snowy sidewalk or a foreclosure of real property in violation of state law should require a federal forum. What was "statesmanship" on the part of Chief Justice Marshall should not be wrenched out of context to accomplish an unnecessary expansion of federal subject matter jurisdiction. Maloan, *supra*, at 760.

Indeed, Congress itself made clear that the broad scope of federal jurisdiction established in *Osborn* was no longer appropriate after Congress authorized general federal jurisdiction in the Judiciary Act of 1875. In *Union Pacific Railway Co. v. Myers*, 115 U.S. 1 (1885) (*Pacific Railroad Removal Cases*), this Court adhered to *Osborn's* broad view of "arising under" jurisdiction and held that state law tort claims against federally chartered railroads could be removed by the railroads to federal court. *Id.* at 14.

The ensuing years witnessed a "flood" of cases involving federally chartered corporations in the federal courts. Congress eventually acted to stem this flood. In 1882 Congress eliminated automatic federal question jurisdiction in cases involving national banks. Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163. In 1915, Congress eliminated automatic federal question jurisdiction over suits involving federally chartered railroads. Act of Jan. 28, 1915, ch. 22, § 5, 38 Stat. 803, 805. Finally, in 1925 Congress enacted Act of Feb. 13, 1925, ch. 229, § 12, 43 Stat. 936, 941, now codified at 28 U.S.C. § 1349, which eliminated automatic federal question jurisdiction for all other federally chartered corporations, except those in

which the federal government owns a controlling interest.[2] *See generally* Lund, *supra*, at 332-33; *see also Gov't Nat'l Mortg. Ass'n v. Terry*, 608 F.2d 614, 620-21 (5th Cir. 1979) ("[S]ection 1349 was passed to diminish the flood of federal litigation that resulted from the Pacific Railroad Removal Cases.").

As Justice Cardozo later indicated, following these enactments, *Osborn*'s broad pronouncement regarding federal jurisdiction was no longer a guiding principle. *Gully*, 299 U.S. at 113. This Court, moreover, has come to regard its adherence in the *Pacific Railroad Removal Cases* to *Osborn*'s broad pronouncement as an "unfortunate decision." *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 379 n.50 (1959).

C. Congress knows how to confer federal subject matter jurisdiction by plain and direct statutory language.

An additional tool for ascertaining the intent of Congress to confer federal subject matter jurisdiction is one that was not available to Chief Justice Marshall. Congress has over the years repeatedly demonstrated its ability to create such jurisdiction using language that is direct and explicit. The

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[2] That statute provides :

> The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.

congressional authorization for the Federal Reserve, for example, provides:

> [A]ll suits of a civil nature at common law or in equity to which any Federal Reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits

12 U.S.C. § 632. That provision by its express language extends the district court's jurisdiction to state law causes of action. *Fed. Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235, 1244 (11th Cir. 2000). Another example is the charter provision Congress enacted for the Federal Home Loan Mortgage Corporation ("Freddie Mac"), a cousin to Fannie Mae:

> [A]ll civil actions to which the corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions.

12 U.S.C. § 1452(f). Where Congress as not made such express provision for subject matter jurisdiction over state law claims, there is nowadays no basis for a district court to infer that Congress impliedly did so merely by referencing capacity to sue and be sued in federal court.

Congress has also demonstrated its ability to tailor "sue and be sued" provisions to define the scope of federal subject matter jurisdiction with far greater precision than the automatic formulation employed by

the court below. For example, Congress provided that all civil suits to which the Federal Deposit Insurance Corporation is a party shall be deemed to arise under the laws of the United States, except that certain actions "in which only the interpretation of the law of such State is necessary, shall not be deemed to arise under the laws of the United States." 12 U.S.C. § 1819(b)(2). *See also* 36 U.S.C. § 220505(b)(9) (conferring original jurisdiction over any civil action against the U.S. Olympic Committee "solely relating to the corporation's responsibilities under this chapter").

This Court should grant the Petition to make clear that *Red Cross* held that specific mention of federal courts in the charter's "sue and be sued" provision *may* create federal jurisdiction to decide state law claims, only if there is clear evidence that Congress so intended. The Court should further make clear that the broad scope of federal jurisdiction over cases involving congressionally chartered corporations enunciated in *Osborn* is no longer a guiding principle.

III. The Lower Court's Broad, Automatic Rule of Federal Jurisdiction Is Not Consistent with the Role of Federal Courts in the Federalist System.

A. The decision below is inconsistent with the role of federal courts with limited and clearly defined jurisdiction.

Federal district courts are, of course, "'courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v.*

Minton, --- U.S. ----, 133 S. Ct. 1059, 1064 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). An action is presumed to lie outside this limited jurisdiction. *Kokkonen*, 511 U.S. at 377 (citing *Turner v. Bank of N. Am.*, 4 U.S. (4 Dall.) 8, 11 (1799)). The "burden of establishing the contrary rests upon the party asserting jurisdiction." *Id. See also* 13 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3522, at 62 (1984) (The "party seeking to invoke the jurisdiction of a federal court must demonstrate that the case is within the competence of the federal court. The presumption is that the court lacks jurisdiction in a particular case until it has been demonstrated that jurisdiction over the subject matter exists."). This presumption assures that the scope of the federal courts' jurisdiction "is carefully guarded against expansion by judicial interpretation." *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17 (1951).

A charter provision authorizing the corporation to "sue and be sued" in court addresses no more than the entity's capacity to sue and does not overcome this presumption. *See Deveaux*, 9 U.S. at 85-86. Adding the word "federal" does not clearly and plainly indicate that Congress intended that federal courts have subject matter jurisdiction over any state-law case in which the federally chartered corporation is a party.

Indeed, "the policy of the successive acts of Congress regulating the jurisdiction of federal courts is one calling for the strict construction of such legislation." *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941). *See also* Maloan, *supra*, at 759 (noting the "clear thrust of congressional policy in recent years . . toward limiting federal jurisdiction to those situations where federal law controls").

That policy is grounded in pragmatic concerns. As one commentator explained, "Federal dockets are overcrowded, and the last thing federal judges need is to be further saddled with cases grounded entirely on state law." *Id. See also Luckett v. Harris Hosp.-Fort Worth*, 764 F. Supp. 436, 441 (N.D. Tex. 1991) (expressing concerns that broader federal jurisdiction for congressionally chartered corporations would open a "floodgate" of state law cases); *Collins v. Am. Red Cross*, 724 F. Supp. 353, 358 (E.D. Pa. 1989) (similar).

The influx of such cases represents a diversion of federal judicial resources to deal with actions based purely on state law in which district courts possess no particular expertise. As Professor Cooper urged in a symposium addressing supplemental jurisdiction over state law cases, "federal courts must first husband their resources to dispose of the matters that establish federal jurisdiction." Edward H. Cooper, *An Alternative and Discretionary § 1367*, 74 Ind. L.J. 153, 155 (1998). *Cf.* Henry J. Friendly, *Federal Jurisdiction: A General View* 141 (1973) (Warning that broad diversity jurisdiction threatens "the diversion of judge-power urgently needed for tasks which only federal courts can handle or which, because of their expertise, they can handle significantly better than the courts of a state.").

B. The broad rule of automatic federal jurisdiction in cases involving state law actions by or against federally chartered entities undermines the role of state courts.

It is a truism that "the proper allocation of authority between United States and state courts" is a matter of "perennial concern." Felix Frankfurter,

Distribution of Judicial Power Between United States and State Courts, 13 Cornell L.Q. 499, 506 (1928). Undue expansion of the scope of federal jurisdiction to include cases involving only issues of state law necessarily intrudes upon the role of state courts in our federalist system. *See* 13 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3502 ("[E]xpansion of the jurisdiction of the federal courts diminishes the power of the states.").

Even the appropriate application of state law in diversity cases raises federalism concerns. As one scholar points out, despite the fact that the federal court correctly interpreted state law, "it remains true that the rule applied in federal court did not in fact constitute a sovereign command of the state at the time the federal court rendered its decision." Bradford R. Clark, *Ascertaining the Laws of the Several States: Positivism and Judicial Federalism After Erie*, 145 U. Pa. L. Rev. 1459, 1505 (1997). The Chief Judge of the Third Circuit has pointed out that federal court adjudication of state law claims results in "unavoidable intrusion of the federal courts in the lawgiving function of state courts." Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 Va. L. Rev. 1671, 1675 (1992).

> When federal judges make state law—and we do, . . . judges who are not selected under the state's system and who are not answerable to its constituency are undertaking an inherent state court function.

Id. at 1687. For that reason, Chief Justice Stone observed, it is the responsibility of the federal judicial

branch to avoid intrusion into state authority except where clearly authorized by Congress:

> Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.

Sheets, 313 U.S. at 109 (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).

Congress can, of course, confer subject matter jurisdiction on federal courts within the bounds of Article III. In the context of federal preemption of state law, this Court made clear that the sovereignty of the states is "more properly protected by the procedural safeguards inherent in the structure of the federal system," that is, by their representation in Congress. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985). The corollary to that principle, Justice O'Connor later pointed out, is that "we must be absolutely certain that Congress intended" to displace state law. *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991).

Similarly, where a federally chartered corporation contends that federal district courts have subject matter jurisdiction over any state-law claim by or against the corporation, the federal court should require a "plain statement" that Congress intended such a result. *See id.*

This Court should grant the Petition to address unsettled issues with respect to federal subject matter jurisdiction over state law actions by or against federally chartered corporations, to correct erroneous

interpretation of this Court's prior decisions in *Red Cross* and *Osborn*, and to require that extensions of federal jurisdiction over state law causes of action be supported by plain and unambiguous evidence that Congress intended that result.

CONCLUSION

For the foregoing reasons, the Petition should be granted.

Date: May 22, 2015

Respectfully submitted,

Jeffrey R. White
Counsel of Record
CENTER FOR
CONSTITUTIONAL
LITIGATION, P.C.
777 6th Street N.W.
Suite 520
Washington, DC 20001
(202) 944-2839
jeffrey.white@cclfirm.com

Attorney for Amicus Curiae

No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,

Petitioners,

v.

CENDANT MORTGAGE CORP., ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com
Counsel for Petitioners

Jonathan D. Hacker
Counsel of Record
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300
jhacker@omm.com
Counsel for Respondent Fannie Mae

PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 17, 2015
CERTIORARI GRANTED JUNE 28, 2016

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General Docket
United States Court of Appeals
for the Ninth Circuit

Court of Appeals Docket #: 10-56068 **Docketed:** 07/06/2010
Termed: 10/02/2014
Nature of Suit:
3290 Other Real Property Actions
Crystal Lightfoot, et al
v.
Cendant Mortgage Corporation
Appeal From:
U.S. District Court for Central California, Los Angeles
Fee Status: Paid

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON

Plaintiffs – Appellants

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; FANNIE MAE; ROBERT O. MATTHEWS; ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants – Appellees

Date Filed	#	Docket Text
07/06/2010	1	DOCKETED CAUSE AND ENTERED APPEARANCES

Date Filed	#	Docket Text
		OF APPELLANTS IN PRO SE AND COUNSEL FOR APPELLEES. SEND MQ: No. The schedule is set as follows: Fee due from Appellant Beverly Hollis-Arrington and Appellant Crystal Monique Lightfoot on 07/06/2010. Appellant Beverly Hollis-Arrington and Appellant Crystal Monique Lightfoot opening brief due 10/14/2010. Appellee Attorneys Equity National Corporation answering brief due 11/15/2010. Appellant's optional reply brief is due 14 days after service of the answering brief. [7394802] (JN) [Entered: 07/06/2010 04:00 PM
10/05/2010	7	Received copy of amended notice of appeal from district court. [7499970] (RL) [Entered: 10/06/2010 03:47 PM]
10/21/2010	9	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot motion to correct the docket as to the participants in this appeal and the issues on appeal

Date Filed	#	Docket Text
		relative to the amended notice of appeal. Declarations of Hollis-Arrington & Lightfoot. Served on 10/19/2010. [7519905] (RL) [Entered: 10/22/2010 03:17 PM]
01/11/2011	13	Filed order (STEPHEN R. REINHARDT and N. RANDY SMITH) Appellants' "motion to correct the docket as to the participants in this appeal and the issues on appeal relative to the amended notice of appeal" is granted. The Clerk shall amend the docket to include all defendants named in the district court. Appellants' motion to consolidate related appeal Nos. 10-56068 and 10-56649 is denied. Appellants' motion to expedite the appeal is denied. Appellants' motion "for court's signature on appellant's *lis pendens*" is construed as a motion for injunctive relief. So construed, the motion is denied. Appellants' motion for an extension of time to file the opening brief is granted. The briefing schedule is as follows: the

Date Filed	#	Docket Text
		opening brief is due February 11, 2011; the answering brief is due March 14, 2011; and the optional reply is due within 14 days of the service of the answering brief. [7608361] (BJB) [Entered: 01/11/2011 03:09 PM]
01/11/2011	14	Entered appearance of Appellees Cendant Mortgage Corporation, Fannie Mae and Robert O. Matthews. [7608389] (HH) [Entered: 01/11/2011 03:17 PM]
02/11/2011	16	Filed original and 7 copies of Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot (Informal: Yes) opening brief of 5 pages. Served on 02/10/2011. [7653393] (FT) [Entered: 02/17/2011 04:21 PM]
02/11/2011	17	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot excerpts of record in 2 volumes. [7653509]--[Edited 02/17/2011

Date Filed	#	Docket Text
		by BY] (FT) [Entered: 02/17/2011 04:57 PM]
03/14/2011	20	Submitted (ECF) Answering brief for review. Submitted by Appellees Cendant Mortgage Corporation and Fannie Mae. Date of service: 03/14/2011. [7679220]--[COURT UPDATE: Replaced PDF of brief (includes statement of related cases). Resent NDA. 03/15/2011 by TT] (Chilton, Jan) [Entered: 03/14/2011 12:01 PM]
03/24/2011	23	Filed original and 7 copies of Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot (Informal: No) reply brief of 19 pages. Served on 03/22/2011. [7697774] (LA) [Entered: 03/29/2011 11:50 AM]
01/09/2012	30	FILED MEMORANDUM (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and M. MARGARET MCKEOWN) Plaintiffs' motion for a preliminary injunction is denied. Plaintiffs' request for judicial

Date Filed	#	Docket Text
		notice is granted. AFFIRMED. FILED AND ENTERED JUDGMENT. [8023465] (ST) [Entered: 01/09/2012 10:05 AM]
01/20/2012	31	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot petition for panel rehearing and petition for rehearing en banc. Number of Pages: 16. Served on 01/19/2012. Deficiency: None. (RESEARCH) [8040409] (LC) [Entered: 01/23/2012 10:21 AM]
04/13/2012	32	Filed order (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and M. MARGARET MCKEOWN) We hereby sua sponte withdraw the memorandum disposition filed on January 9, 2012. Appellants' petition for panel rehearing and petition for rehearing en banc are denied as moot. Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would

Date Filed	#	Docket Text
		benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellants for purposes of this appeal only. Pro bono counsel shall consult with appellants to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellants' previously filed briefs will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Appellees shall also file a replacement or supplemental brief, or shall notify the court in writing that appellees stand on the previously filed answering brief. Both parties shall state on the cover pages of the briefs whether they are replacement briefs or supplemental briefs. The parties may file replacement excerpts or supplemental excerpts. If replacement

Date Filed	#	Docket Text
		excerpts are filed, the previously tendered excerpts will be stricken. The absence of replacement excerpts will be treated as a joinder in the previously submitted excerpts. In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § 1723a(a). Pro bono counsel shall appear at oral argument. The Clerk shall establish a supplemental/replacement briefing schedule. The appeal is stayed pending further order of this court. If appellants object to the court's appointment of counsel in this appeal, appellants shall file a written objection within 14 days after the date of this order [8139068] (SJ) [Entered: 04/13/2012 10:16 AM]
09/17/2012	36	Filed clerk order (Deputy Clerk: KD): Pursuant to this

Date Filed	#	Docket Text
		court's April 13, 2012 order directing the Clerk to appoint pro bono counsel, Thomas Ogden, Esq. is hereby appointed to represent appellants for purposes of this appeal only. The Clerk shall amend the docket to reflect that Thomas Ogden, Esq., The Law Offices of Thomas Ogden, 1108 W. Valley Blvd 6-862, Alhambra, CA 91803, Email: thomas@ogdentaxlaw.com, is pro bono counsel of record for appellants. Within 14 days after the date of this order, pro bono counsel shall register on the court's website for electronic filing/noticing with the Case Management/ Electronic Case Files (CM/ECF) system, if counsel has not already done so. Within 30 days after the date of this order, appellants shall, and appellees may, complete and submit the Ninth Circuit Mediation Questionnaire. See 9th Cir. R. 3-4. The Clerk shall transmit the Mediation Questionnaire to counsel with this order.

Date Filed	#	Docket Text
		Counsel shall return it according to the instructions contained in the Mediation Questionnaire. Supplemental or replacement briefing shall proceed as follows: the opening brief is due November 29, 2012; the answering brief is due January 4, 2013; and the optional reply brief is due within 14 days after service of the answering brief. Appellants' pro se May 15, 2012 motion to correct the docket is denied without prejudice to renewal by counsel. [8326436] (SM) [Entered: 09/17/2012 03:09 PM]
11/29/2012	38	Submitted (ECF) Opening brief for review. Submitted by Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Date of service: 11/29/2012. [8420449] (Ogden, Thomas) [Entered: 11/29/2012 05:04 PM]
12/06/2012	43	Filed Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot excerpts of record in 1 volume.

Date Filed	#	Docket Text
		No certificate of service. [8429813] (GV) [Entered: 12/07/2012 10:49 AM]
02/04/2013	46	Submitted (ECF) Answering Brief and supplemental excerpts of record in 1 volume(s) for review. Submitted by Appellee Fannie Mae. Date of service: 02/04/2013. [8498556] (Hacker, Jonathan) [Entered: 02/04/2013 10:57 AM]
06/05/2013	56	ARGUED AND SUBMITTED TO STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN.[8656050] (BG) [Entered: 06/05/2013 01:19 PM]
10/02/2014	57	FILED OPINION (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) AFFIRMED. Judge: WAF Authoring, Judge: SHS Dissenting. FILED AND ENTERED JUDGMENT. [9262469] --[Edited: Opinion's caption edited. 10/15/2014 by TL] (RMM) [Entered: 10/02/2014 08:15 AM]

Date Filed	#	Docket Text
10/02/2014	58	Filed (ECF) Appellants Ms. Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot petition for rehearing en banc (from 10/02/2014 opinion). Date of service: 10/02/2014. [9263098] (Ogden, Thomas) [Entered: 10/02/2014 11:40 AM]
10/14/2014	61	Filed order (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) Appellees are directed to file a response to Appellants' Petition for Rehearing En Banc, filed with this court on October 2, 2014. The response shall not exceed 15 pages or 4200 words and shall be filed within 21 days of the date of this order. Parties who are registered for ECF must file the response electronically without submission of paper copies. Parties who are not registered ECF filers must file the original response plus 50 paper copies. [9276261] (SM) [Entered: 10/14/2014 03:27 PM]

Date Filed	#	Docket Text
11/04/2014	63	Filed (ECF) Appellee Fannie Mae response to Petition for Rehearing En Banc, Petition for Rehearing En Banc for re-hearing by en banc only (all active, any interested senior judges). Date of service: 11/04/2014. [9301124]. [10-56068] (Hacker, Jonathan) [Entered: 11/04/2014 01:08 PM]
11/20/2014	64	Filed order (STEPHEN S. TROTT, WILLIAM A. FLETCHER and SIDNEY H. STEIN) Judge W. Fletcher has voted to deny the petition for rehearing en banc; and Judge Trott so recommends. Judge Stein recommends that the petition for rehearing en banc be granted. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc, filed October 2, 2014, is hereby DENIED. [9320988]

Date Filed	#	Docket Text
		(SM) [Entered: 11/20/2014 02:51 PM]
12/15/2014	65	MANDATE ISSUED.(SST, WAF and SHS) [9350178] (JFF) [Entered: 12/15/2014 03:43 PM]
03/09/2015	66	Received notice from the Supreme Court: petition for certiorari filed on 02/17/2015. Supreme Court Number 14-1055. [9450598] (RR) [Entered: 03/09/2015 04:34 PM]
06/28/2016	67	Received notice from the Supreme Court. Petition for certiorari GRANTED on 06/28/2016. Supreme Court Number 14-1055. [10032444] (HH) [Entered: 06/28/2016 02:37 PM]

UNITED STATES DISTRICT COURT for the
CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #:
2:02-cv-06568-CBM-AJWX

Crystal Lightfoot, et al v. Cendant Mortgage, et al
Assigned to: Judge Consuelo B. Marshall
Referred to: Discovery Andrew J. Wistrich
Demand: $75,000
Related Case: 2:00-cv-11125-CBM-AJWX
Case in other court: 9th CCA, 10-56068
Cause: 28:1441 Notice of Removal

Date Filed: 08/22/2002
Date Terminated: 06/11/2010
Jury Demand: None
Nature of Suit: 290 Real Property: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
08/22/2002	1	NOTICE OF REMOVAL by defendant Cendant Mortgage, defendant Fannie Mae from LA Cty Sup Crt (Case Number: LC 0161536) with copy summons and complaint referred to Discovery Robert N. Block. (pc) (Entered: 08/26/2002)
08/22/2002	6	JOINDER by defendant Cendant Mortgage Corporation to removal action [1-1] (nhac) (Entered: 08/28/2002)
08/23/2002	3	JOINDER by defendant Robert O Matthews joining notice of removal of action [1-1] (jp) (Entered: 08/26/2002)
08/23/2002	4	JOINDER by defendant Attorneys Equity Ntl joining notice of removal of action [1-1] (jp) (Entered: 08/26/2002)

Date Filed	#	Docket Text
08/26/2002	11	EX PARTE APPLICATION filed by plaintiffs Crystal Monique Lightfoot, Beverly Ann Hollis-Arrington to remand case back to the Superior Crt; Decls of Crystal Monique Lightfoot, Beverly Hollis-Arrington (jp) (Entered: 08/29/2002)
08/27/2002	12	NOTICE OF MOTION AND MOTION by defendant Fannie Mae, Cendant Mortgage Corp to dismiss; motion hearing set for 9:00 9/23/02 (jp) (Entered: 08/29/2002)
08/28/2002	10	NOTICE OF MOTION AND MOTION by defendant Robert O Matthews to dismiss; PA; motion hearing set for 9:00 9/23/02 (lc) (Entered: 08/29/2002)
09/05/2002	18	MINUTES: In chambers: ORD denying plf ex parte application to remand case back to the Superior Crt [11-1] by Judge Ronald Lew CR:

Date Filed	#	Docket Text
		none (lc) (Entered: 09/06/2002
09/06/2002	21	REQUEST filed by plaintiff for entry of default as to Attorneys Equity Ntl; decl of Beverly Ann Hollis-Arrington & Crystal Monique Lightfoot (lc) (Entered: 09/09/2002)
09/09/2002	22	DEFAULT ENTERED as to defendant Attorneys Equity National Corporation (lc) (Entered: 09/09/2002)
11/18/2002	52	MINUTES: Arguments had. Motion of dfts Fannie Mae, Cendant Mortgage and Robert O Matthews to dismiss [12-1], [10-1] is submitted without oral argument by Judge Consuelo B. Marshall CR: Gary George (el) (Entered: 11/27/2002)

Date Filed	#	Docket Text
2/20/2003	59	ORDER by Judge Consuelo B. Marshall granting defendants Cendant Mortgage Corporation, Fannie Mae and Matthews' motions to dismiss and granting defendants and plaintiff requests for judicial notice [10-1] [12-1] [55-1] [13-1] dismissing party Robert O Matthews, party Fannie Mae, party Cendant Mortgage (lc) (Entered: 02/21/2003)
06/04/2003	70	NOTICE OF MOTION AND MOTION by plaintiff to set aside judgment; declaration of Beverly Hollis-Arrington; motion hearing set for 10:00 7/7/03 (lc) Modified on 09/02/2003 (Entered: 06/05/2003)
08/29/2003	79	ORDER by Judge Consuelo B. Marshall denying plaintiff's motion to set aside judgment [70-

Date Filed	#	Docket Text
		1] (lc) (Entered: 09/02/2003)
09/04/2003	80	NOTICE OF APPEAL by plaintiff Beverly Ann Hollis-Arrington to 9th C/A from Dist. Court order filed 8/29/03 and entered 9/2/03 [79-1], order filed 8/29/03 and entered 9/2/03 [78-1) (cc: Beverly Ann Hollis-Arrington; Michael J. Gilligan; Ralph Shelton; Suzanne Hankins) Fee: Billed (dlu) (Entered: 09/04/2003)
01/05/2004	88	MINUTES OF In Chambers Conference held before Judge Consuelo B. Marshall: Action is removed from the active caseload. (Made JS-6. Case Terminated.) Court Reporter: not reported. (shb,) (Entered: 01/06/2004)

Date Filed	#	Docket Text
01/06/2004	89	MANDATE of 9th CCA filed as to Appeal to Circuit Court, 80, CCA # 0356580. The appeal is affirmed. Mandate received in this district on 1/9/04. (ghap,) (Entered: 01/13/2004)
04/07/2009	92	MOTION TO RESTORE CASE TO ACTIVE CASELOAD FOR THE PURPOSE OF ENTERING FINAL JUDGMENT, pursuant to Rule 54(b, c) of the FRCP to filed by Plaintiff Crystal Monique Lightfoot, Beverly Ann Hollis-Arrington. (lom) Modified on 4/10/2009 (lom). (Entered: 04/10/2009)
10/21/2009	99	JUDGMENT by Judge Consuelo B. Marshall: In accordance with Federal Rule of Civil Procedure 58 and consistent with the Court's "Order Granting Defendants Cendant Mortgage Corporation, Fannie Mae and Matthews' Motions to

Date Filed	#	Docket Text
		Dismiss; And Request for Judicial Notice" 59 , IT IS ORDERED that judgment be entered in favor of Defendants Cendant Mortgage Corporation, Fannie Mae, and Robert O. Matthews. (lom) (Entered: 10/22/2009)
05/27/2010	102	MINUTES: IN CHAMBERS/OFF THE RECORD by Judge Consuelo B. Marshall: The matter before the Court is Plaintiff Crystal Monique Lightfoot's and Beverly Ann Hollis-Arrington's "Motion to Restore Case to Active Caseload for Purpose of Entering Final Judgment: Pursuant to Rule 54(b,c) of the F.R.C.P." [DE 92]. The Court hereby GRANTS Plaintiff's Motion. Plaintiffs are further ordered to show cause no later than Thursday, June 10, 2010 as to why the case shall not be dismissed with prejudice as to Attorneys Equity

Date Filed	#	Docket Text
		National Corporation based on the doctrine of res judicata (See Order for further details). IT IS SO ORDERED granting 92 Motion to Reopen Case (MD-JS5 Case Reopened) (yl) (Entered: 05/27/2010)
06/11/2010	103	ORDER DISMISSING THE ACTION WITH PREJUDICE AGAINST DEFENDANT ATTORNEYS EQUITY NATIONAL CORPORATION based on the doctrine of res judicata by Judge Consuelo B. Marshall. (lom) (Entered: 06/14/2010)
06/11/2010	104	JUDGMENT by Judge Consuelo B. Marshall is entered in favor of Defendant Attorneys Equity National Corporation 103. (MD JS-6, Case Terminated). (lom) (Entered: 06/14/2010)

Date Filed	#	Docket Text
06/11/2010	105	MOTION AND NOTICE OF MOTION pursuant to Rule 60(b): to Set Aside Judgment 99, 104; for fraud upon the court; or in the alternative: an Independent Action for the Court to set aside the Judgment for "Fraud upon the Court," and Motion to set aside the Judgments in cas no. 02-cv-6568 CBM, for fraud upon the Court, 136 filed by Plaintiff Beverly Ann Hollis-Arrington. (lom) (Entered: 06/16/2010)
07/06/2010	109	NOTICE OF APPEAL to the 9th CCA filed by plaintiff Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Appeal of Judgment 104. Filed On: 06/11/2010; Entered On: 06/14/2010; Filing fee $ 455 billed. (dmap) (Entered: 07/06/2010)
09/27/2010	117	ORDER by Judge Consuelo B. Marshall: denying 105 Plaintiff Beverly Ann Hollis-Arrington's and

Date Filed	#	Docket Text
		Crystal Monique Lightfoot's " Motion Pursuant to Rule 60(b): To Set Aside Judgment; for Fraud Upon the Court or, in the Alternative; an Independent Action for the Court to Set Aside the Judgment for 'Fraud Upon the Court'" (Rule 60(b) Motion"). (Refer to attached document for details.) (lom) (Entered: 09/28/2010)
10/05/2010	120	AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by plaintiff Beverly Ann Hollis-Arrington and Crystal Monique Lightfoot. Amending Notice of Appeal to 9th Circuit Court of Appeals 109 Filed On: 07/06/2010; Entered On: 07/06/2010. Fee waived. (dmap) (Entered: 10/05/2010)
12/15/2014	130	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 109, CCA # 10-56068. The judgment of the District Court is

Date Filed	#	Docket Text
		Affirmed. [See document for further information]. Mandate received in this district on 12/15/14. (car) Modified on 12/17/2014 (car). (Entered: 12/17/2014)

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
TEL: (818) 999-3561
FAX: (818) 316-3359

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR

THE COUNTY OF LOS ANGELES

VAN NUYS DIVISION

CRYSTAL MONIQUE LIGHTFOOT BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, Vs. CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, FANNIE MAE, ROBERT O.	Case No.: LC061596 VERIFIED COMPLAINT FOR: 1) WRONGFUL FORECLOSURE 2) VOIDING OF THE TRUSTEE'S DEED. 3) FRAUD AND DECIET\ (4) RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT: CIVIL CODE SECTION 51.5(a)*

* This document is presented as filed, all errors are so in the original.

MATTHEWS : (A MARRIED MAN),

ATTORNEYS EQUITY NATIONAL CORPORATION,

Defendants

5) VIOLATION OF C.C.P. 2924 DUE TO FRAUD/QUITE AND ADVERSE POSESSION
6) SALNDER OF TITLE
7) NEGLEGENT MISREPRESENTATION
8) CIVIL CONSPIRACY
9) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
10) ADVERSE POSESSION OF PROPERTY LOCATED AT 7106 MC LAREN AVE, WEST HILLS CALIFORNIA
11) DECLATORY RELIEF

"DAMAND FOR JURY TRIAL"

JURISDICTION AND VENUE

1. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington are, and at all times herein mentioned were, residents of Los Angeles, County, California

2. Defendant Cendant Mortgage Corporation, is, based upon the information and belief of Plaintiffs, a corporation organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the state of California.

3. Defendant Fannie Mae, is, based upon the information and belief of Plaintiffs, a private corporation, with a government charter, organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the State of California with a corporate office located in Pasadena California.

4. Defendant Attorneys equity National Corporation, is, based upon the information and belief of Plaintiffs, a corporation existing by virtue of, the laws of an unknown state, and is authorized to do business in the State of California, with an office located in Lake Forest, California.

5. Defendant, Robert O. Matthews, is based upon information and belief of Plaintiffs, an individual, who purchased the property located at 7106 McLaren Ave, West Hills, California, from Ed Feldman and Harold Tennen, who were granted the trustee's deed of the aforementioned property in which Plaintiff claims adverse possession.

6. Plaintiff's seek damages in an amount greater than $75,000.00.

FACTS COMMON TO ALL COUNTS

7. Each and every allegation set forth in each and every averment of this pleading hereby is incorporated by this reference in each and every other averment and allegation of this pleading.

8. All acts and/or omissions perpetrated by each defendant in their personal/or official capacity were ratified and approved by all defendants, then and they were acting in the capacity of, agents, servant or employee's of the Corporate defendants with their full consent and ratification. All acts were done with the expressed consent and knowledge of each defendant, and were done with malice, callous, oppressive, reckless and deliberate indifference to the rights of the Plaintiff.

BACKGROUND AND HISTORY

9. On or about July 3, 1999, Plaintiff, Beverly Ann Hollis-Arrington tendered a true and accurate loan application to defendant, Cendant Mortgage Corporation, to refinance her then home located at 7106 McLaren Ave, West Hills, CA 91307. On or about August 23, 1999, the aforementioned loan transaction was funded, recorded and closed based on the information truthfully submitted to Cendant Mortgage Corporation, herein referred to as "Cendant".

10. On or about August 29, 1999, Defendant Cendant submitted this Plaintiffs loan application (which was truthfully submitted) to Defendant, Fannie Mae, by way of their desktop underwriting system. Defendant Cendant, altered the truthful information submitted to them, and in which they relied on to fund the original aforementioned loan. The false information was but is not limited to, the loan to values ratio's, the fact that the Plaintiff had truthfully stated that she was self-employed for most of the year, the fact that Plaintiff was a party to a pending civil action, Plaintiff had several derogatory's on her credit report, there was a prior foreclosure action, as shown on the title report obtained by Cendant Mortgage, and the fact that Plaintiff's reserves were over stated.

    By altering this essential information, defendant Cendant would generate an automatic "Accept" score from the desktop underwriting system of Fannie Mae, without an actual underwriter reviewing the file. A physical review, in all likelihood, should have discovered the aforementioned deficiencies and resulted in a declination by Fannie Mae. Cendant deliberately altered the true information submitted to by them, which was truthfully submitted to Cendant, and in which they funded the loan originally with. Defendant, Fannie Mae, purchased the aforementioned loan, which was truthfully submitted to "Cendant", on or about September 1999. The aforementioned information was provided to Plaintiff, Beverly Ann Hollis-Arrington, upon a written inquiry submitted by Beverly Ann Hollis-Arrington to Fannie Mae, in October 2000.

11. In early September 1999, the exact date is unknown to Plaintiff, Crystal Monique Lightfoot, at this time, Defendant Fannie Mae, purchased the aforementioned loan from Defendant Cendant Mortgage Corporation. After this purchase on the secondary Market, by Fannie Mae, Cendant Mortgage remained the "SERVICER" of the aforementioned loan. On or about September 10, 1999, Plaintiff, Beverly Ann Hollis-Arrington, received a payment coupon book from "Servicer", Cendant Mortgage; the payment coupon erroneously reflected a monthly payment amount of $1370.00. Plaintiffs was unaware of any errors in the calculations of they payments that did exist at this time, or the fraudulent activity on the part of any defendant as it related to the funding or selling of the aforementioned real estate loan.

12. On or about October 2, 1999, Plaintiff, Beverly Ann Hollis-Arrington, became ill with heart problems, coupled with enormous legal expenses. Plaintiff, Beverly Ann Hollis-Arrington's first house payment was due on October 1, 1999. Plaintiffs being unaware of any problems with the loan amount, escrow amount, amount financed and finance charges submitted an application for a forbearance agreement in January 2000. Plaintiff, Beverly Ann Hollis-Arrington was in arrears 3 months at the time she submitted the request to modify her loan.

13. Cendant Mortgage Corporation, who was the "SERVICER" of the loan acknowledged the receipt of plaintiff's request for a forbearance agreement on or about February 20, 2000. "SERVICER",

Cendant Mortgage had performed an end of year review of plaintiff, Beverly Ann Hollis-Arrington's impound account in January 2000, as part of the service agreement and to correct any deficiencies in the amounts due to handle the taxes, hazard insurance, and PMI, if any was due on the account. Defendants, Cendant Mortgage and Fannie Mae were aware at this time that the payment amount had been miscalculated and the payments were short by more than $200.00 monthly. Defendants, Fannie Mae, and Cendant entered into their scheme to deceive Plaintiff, Beverly Ann Hollis-Arrington, at the time they discovered that the payments were short by more than $200.00 a month, In January of 2000.

14. A title search on the property located at 7106 Mc Laren Ave, West Hills, Ca, revealed a substitution of trustee recorded in the office of the Los Angeles County recorder on or about April 24, 2000. A true copy, obtained from the Los Angeles County recorder is attached hereto as exhibit "B". The substitution recites in relevant part that: Cendant Mortgage Corporation, the undersigned is the present beneficiary under the deed of trust substitutes Attorney Equity National Corporation in Place and stead of original trustee.

15. On April 24, 2000, the date of the recording of the substitution of trustee, in the office of the Los Angeles County recorder, "Fannie Mae" was the beneficiary, as all of "Cendants" interest as the beneficiary had been assigned to Fannie Mae in September, or there about, when the aforementioned loan had been sold by "Cendant Mortgage

Corporation", to "Fannie Mae", on the secondary Market. The aforementioned document is false, as Fannie Mae owned this loan at the time of the recording of this document, in the office of the Los Angeles County recorder. Cendant Mortgage was merely the loan "SERVICER" of the aforementioned loan.

15. Between a period of early January 2000 and early May 2000, Plaintiff, Beverly Hollis-Arrington attempted to enter in to a forbearance agreement. "Servicer" Cendant Mortgage Corporation with the approval and ratification of "Fannie Mae" refused to accept any payments from Plaintiff, Beverly Hollis-Arrington, for a five-month period while leading Plaintiff, Beverly Hollis-Arrington, to believe that a forbearance agreement had already been approved.

16. Plaintiff, Beverly Hollis-Arrington was in frequent contact with Kevin Glover, in the loss mitigation department of Cendant Mortgage Corporation. After receiving all documents requested by Mr. Glover, Plaintiff, Beverly Hollis-Arrington, was told by Mr. Glover, that he was approving the forbearance agreement and that he was submitting the package for final approval, with the first forbearance payment due in June of 2000. Mr. Glover stated that a contribution would be required from the Plaintiff as a "good Faith" gesture. Plaintiff relied on these misrepresentations for a period of five months, on May 10, 2000; one day before Plaintiffs home was set for trustee sale, Plaintiff, Beverly Hollis-Arrington received a letter from Cendant Mortgage Corporation, "The Servicer",

stating that the investor, "Fannie Mae", had denied the forbearance agreement.

17. In response to the aforementioned actions by defendants Fannie Mae and Cendant Mortgage Corporation, and the subsequent sale of Plaintiff's residence set for May 11, 2000, Plaintiff, Beverly Hollis-Arrington, filed for chapter 13 in the bankruptcy court to stop the May 11, 2000 sale of the aforementioned property. Plaintiff, Beverly Hollis-Arrington, was unaware of the need for defendants Fannie Mae and Cendant Mortgage to foreclose on her home, due to a miscalculation of her house payment continued to negotiate with Cendant to allow her to cure the default on an accelerated schedule in order to avoid bankruptcy, as there were only two items on the bankruptcy petition. Plaintiff, Beverly Hollis-Arrington, appeared at the 341A meeting in June of 2000, Plaintiff informed the trustee that she was attempting to avoid remaining in bankruptcy by working out an accelerated payment schedule with Cendant Mortgage and Fannie Mae. The chapter 13 Trustee noted the record and stated that she would dismiss with no bar in the event that things did not work out, Plaintiff could file for immediate for protection under chapter 13 again. Plaintiff, Beverly Hollis-Arrington, filed another bankruptcy in July 2000, the IRS filed an erroneous claim for $136,000.00 against plaintiff's July bankruptcy, plaintiff's attempts to resolve the issues with the IRS were unsuccessful; Plaintiff's July Bankruptcy was dismissed with a 180 day bar. Plaintiff, Beverly Hollis-Arrington's, home was again set to trustee sell, for September 18, 2000.

18. Plaintiff, Beverly Hollis-Arrington caused to be recorded in the office of the Los Angeles, county recorder, a quitclaim deed granting title of the aforementioned property, to her daughter, and Plaintiff, Crystal Monique Lightfoot, who at all times resided with Plaintiff, Beverly Hollis-Arrington. On September 11, 2000, a subsequent bankruptcy was filed by Plaintiff, Crystal Monique Lightfoot on September 14, 2000.

19. On September 14, 2000 plaintiff and her daughter caused to be transmitted to Attorneys Equity National Corporation, the purported trustee of Cendant Mortgage Corporation, and the "Servicer" Cendant Mortgage, of the aforementioned loan, a copy of the first page of the bankruptcy petition, stating that A bankruptcy had been filed in the name of Crystal Lightfoot, and informing the "False trustee", Attorney Equity National Corporation, that the property located at 7106 McLaren ave, West Hills, CA had been transfer to Ms. Lightfoot by way of quitclaim deed. Additionally, the United States bankruptcy court sent notice to Cendant Mortgage Corporation and Attorneys Equity service that a bankruptcy had commenced, showing the trustee's sale number and the loan number, as part of the creditors mailing list, this notification was mailed by the bankruptcy court on September 14, 2000.

19. On September 16, 2000 Fannie Mae and Cendant Mortgage Corporation and the trustee ignored all notifications of a bankruptcy and violated the "automatic stay", by preceding with the trustee's sale

on September 16, 2000, of the residence located at 7106 McLaren Ave, West Hills, Ca.

20. On or about October 22, 2000, an agent from coastland realty appeared at the property of Plaintiff, Crystal Lightfoot, to start eviction procedures, agent Young was notified that if a sale had taken place, it was in violation of the bankruptcy automatic stay, and was therefore "VOID".

21. On or about October 18, 2000, Plaintiff, Beverly Hollis-Arrington filed a lawsuit in the United States District Court, Los Angeles, California against "Cendant Mortgage Corporation". The action is currently on appeal to the 9th circuit court of appeals.

22. Defendants Cendant Mortgage, Fannie Mae and attorneys National Corporation, conspired together to reset a trustee sale date of February 6, 2001 and file the notice of rescission of the trustee's upon sale on the same day, February 6, 2001, in which a new trustees sale was scheduled to insure that the property would go back to one of the defendants or a bona fide purchaser, in order to insure that Plaintiff, Crystal Lightfoot, could not refinance or reclaim that property located at 7106 McLaren Ave, West Hills, Ca.

23. On or about October 20, 2000, Andrea Jenkins of the Foreclosure department from Cendant Mortgage Corporation telephoned Plaintiff, Beverly Hollis-Arrington to state that she has postponed the trustee sale, which was set for November 11, 2000, to January 15, 2001, to allow Plaintiffs, to

refinance the property located at 7106 McLaren Ave, West Hills, Ca. This was false, and Ms. Jenkins knew that she was misrepresenting the intention to postpone the trustee sale by Cendant Mortgage, "the Servicer" and Fannie Mae "the Assignee of all beneficiary interest" in the loan.

24. "Attorney's Equity Nation Corporation," the falsely alleged trustee, held the trustee's sale on September 16, 2000, and issued a trustee's deed to Cendant Mortgage Corporation, the trustee's deed was recorded on 8/23/00. Cendant Mortgage claims that they were the beneficiary were false, both Cendant Mortgage as the "Servicer" and Fannie Mae, the "assignee" knew this was false and a misrepresentation of the truth.

A title search conducted at the request of Plaintiff, Crystal Monique Lightfoot revealed, that between a period of September 16, 2000 and February 6, 2001, All defendants, conspired together to hold a trustee sale in violation of the automatic stay, then agreed among themselves (Cendant, Fannie Mae and Attorneys equity Nation Corporation), to withhold the rescission of the trustee's deed upon sale, as required by [Civil code section 1058.5(b)], to restore the condition of the record title and the priority of all liens to the status before the recordation of the trustee's deed.

25. Andrea Jenkins, of Cendant Mortgage Corporation, the "Servicer" and Fannie Mae the "assignee" was aware that the aforementioned loan could not be refinanced, as the title had been transferred by way of the trustee's deed, issued at the trustee

sale, held in violation of the bankruptcy automatic stay, on September 16, 2000. Ms. Jenkins, knew that her representation of a postponed trustee sale was false, and that, Plaintiff, Crystal Lightfoot, could not refinance the property which was transferred by defendants, Cendant Mortgage Corporation, Fannie Mae, And Attorneys Equity National Corporation, who did not restore the condition of the title when they all were informed that the trustee's sale had been invalidated by a pending bankruptcy.

26. Defendants Cendant Mortgage Corporation, and Fannie Mae has entered into an agreement to target "Black" consumers within the State of California, to identify consumers in trouble with their Real Estate loans, Cendant Mortgage or their indirect wholly owned subsidiary steers loans which they know do no meet their credit standards.

27. Cendant Mortgage then manipulates the credit information and makes an "A" paper loan. Immediately after funding the loan that are below credit standards, with delinquencies, prior foreclosure action, no verification of prior payment history and no or little reserves, and a history of being in trouble with making payments on their property. Cendant Mortgage then, submits this information to Fannie Mae by way of the desktop underwriting system. Cendants Mortgage manipulates the information submitted, to Fannie Mae to obtain an automatic "Accept" score.

28. Cendant Mortgage and Fannie Mae then await the "Black" consumer to default on the loan and immediately move in to foreclose.

29. Defendant Attorneys equity National Corporation then with full knowledge of Cendants and Fannie Mae's illegal actions publishes the defaults and trustee's sales. Defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation are all aware of the nefarious plans and illegal acts perpetrated by one another.

30. Defendant Matthews purchased the property located at 7106 McLaren Ave, West Hills, Ca, in which Plaintiff Crystal Lightfoot claims adverse possession. Defendant, Cendant Mortgage, by and through a wholly owned subsidiary, PHH mortgage, also finances Matthews loan, their dba is PHH DBA Cendant Mortgage Corporation.

WRONGFUL FORECLOSURE: AGAINST: CENDANT MORTGAGE: FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

31. Plaintiff, Crystal Lightfoot "ONLY", repeats and repleads paragraph 1 through 31 of the complaint as though fully set forth in this pleading. Plaintiff, Crystal Lightfoot alleges that on June 29, 2001 when the property located at 7106 McLaren Ave, West Hills, Ca was sold by the purported trustee, Attorneys Equity service, Cendant Mortgage who acted as beneficiary to substitute the trustee on the deed of trust was without power to do so. Cendant Mortgage made the substitution by falsely

stating that they were the beneficiaries, when in fact Fannie Mae, was the assignee. Therefore, all acts associated with default and subsequent trustee sale were wrongful, as the trustee was also aware that the actions of the defendants rendered the sale wrongful.

VOIDING OF TRUSTEE'S DEED

32. Plaintiff, Crystal Monique Lightfoot "ONLY" makes the claim to void trustee's deed. Plaintiff, Crystal Monique Lightfoot repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading. Whereas the original deed of trust names First American title insurance company as the trustee, with Cendant Mortgage Corporation as the beneficiary, whereas, the loan of Beverly Ann Hollis-Arrington was sold on the secondary Market on or about September 20, 1999, one month after Cendant Mortgage funded the loan. Fannie Mae, as the assignee, "ONLY" could substitute the beneficiary from First American title insurance corporation. All acts by Attorneys equity National Corporation are "VOID", as they were appointed by Cendant Mortgage, claiming to be the beneficiary.

FRAUD AND DECEIT: AGAINST CENDANT MORTGAGE; FANNIE MAE; AND ATTORNEYS EQUITY NATIONAL CORPORATION

33. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegation for fraud and deceit. Plaintiffs, repleads and repeats paragraphs 1 through 31 as though fully set forth in this pleading.

34. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington makes the following allegations of fraud: On April 24, 2000 the filing of the substitution of trustee by defendant Cendant Mortgage Corporation, Cendant Mortgage knew that this document was false, Cendant Mortgage misrepresented their position as "Servicer" to be the beneficiary, Plaintiff, Beverly Ann Hollis-Arrington and Crystal Lightfoot justifiable relied on this misrepresentation and filed one of five bankruptcies attempting to save the property located at 7106 McLaren Ave, West Hills. Defendant Cendant Mortgage knew or should have known that Plaintiff would rely on this information, which resulted in injury to plaintiff's credit and the ultimate loss of their home.

35. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

36. On or about October 20, 2000, Defendants, Cendant Mortgage, the "Servicer" and Fannie Mae, the

"assignee", by and through employee Andrea Jenkins of Cendants foreclosure department, called plaintiff, Beverly Ann Hollis-Arrington, Ms. Jenkins misrepresented that Cendant and Fannie Mae, would postpone a trustee's sale set for November 2000 to allow Plaintiffs to refinance their home.

37. This in fact was a false representation, Ms. Jenkins of Cendant Mortgage, "the servicer" was aware that defendants Cendant Mortgage and Fannie Mae "the Assignee" had conducted a trustee sale by and through the alleged trustee, Attorneys Equity National Corporation.

38. Defendants acted intentionally to induce Plaintiffs to act on the misrepresentation that the property was in the Plaintiff's name, when in fact Ms. Jenkins knew that, Cendant, Fannie Mae and Attorneys equity National Corporation had conspired together to hold a trustee sale in violation of the automatic stay, and when they became aware of the invalidation of the sale by a pending bankruptcy of Plaintiff, Crystal Monique Lightfoot.

39. Defendants, Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity National Corporation, were aware that the title had not been restored as required by California Civil Code 1058.5(b). Defendant knew that plaintiffs could not obtain refinancing, on property which had been transferred by trustee's deed to Cendant Mortgage Corporation, and recorded on 9/23/00/

40. As a result plaintiffs suffered damages to their credit, with numerous bankruptcies, and the subsequent loss of their home.

RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT CIV. CODE 51.5(b): AGINST: CENDANT MORTGAGE: FANNIE MAE: ATTORNEYS EQUITY

41. Plaintiffs, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington, repeats and repleads paragraphs 1 through 31 as though fully set forth in this pleading.

Plaintiffs allege that Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity Nation Corporation, has formed a conspiracy to discriminate against "BLACK" consumers, seeking refinancing of their real property in the State of California.

42. Plaintiffs learned that they had been injured by way of the discriminatory policies toward "BLACK" applicants in despair with their mortgages, in Late September 2001. The unlawful discriminatory scheme seems to work in this fashion, Defendant Cendant Mortgage takes the initial application either directly or indirectly through it wholly owned subsidiary and DBA, PHH. Cendant Mortgage then identifies the race of the applicant by way of the application. If the applicant is determined to be "BLACK", and their credit does not meet the standard to loan on "A" paper, Cendant Mortgage then doctors the application to meet the scoring system, and obtain underwriting,

despite the fact that the "BLACK" applicant is not credit worthy.

43. Defendant Cendant Mortgage then initially funds the loans of the "BLACK" applicant then turns around within 30 days and sells the loans on the secondary market to Fannie Mae.

44. Defendant Cendant Mortgage alters the application to generate an automatic accept score from Fannie Mae. Fannie Mae is aware of this policy, when the "BLACK" applicant defaults on the loan, which in most cases they do and as we did, Fannie Mae takes the property to resale sometimes at a higher value, and other times to bolster their portfolio.

45. Plaintiffs further alleges that the applications are evaluated differently from "WHITE" applicants in that the "BLACK" applicants are considered for non-creditworthiness as opposed to "WHITE" applicants that are considered for creditworthiness.

46. Plaintiffs allege that "BLACK" applicants are discriminated against as they are expected are set up to fail as opposed to white applicants who these defendant set out to help.

47. Plaintiffs allege that they were treated differently from "WHITES" from the beginning of the loan process to the foreclosure of their home. Plaintiffs are both "BLACK"

VIOLATION OF CIV. CODE 2924 DUE TO FRAUD QUITE TITLE AND ADVERSE POSESSION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ROBERT MATTHEWS: AND ATTORNEYS EQUITY NATIONAL

48. Plaintiff Crystal Monique Lightfoot "ONLY" makes the allegation for violation of Civil Code 2924 due to fraud. Plaintiff. Crystal Monique Lightfoot, repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

49. California Civil Code set forth a statutory scheme for foreclosing non-judicially on a property. Plaintiff Crystal Lightfoot alleges that defendants, Cendant Mortgage, Fannie Mae and Attorneys Equity National Corporation violated that scheme through fraud.

50. Plaintiff, Crystal Monique Lightfoot alleges that defendants, Cendant Mortgage Corporation, Fannie Mae And Attorneys Equity service conspired together to misrepresent that Cendant was the beneficiary of the loan of Plaintiffs mother, Beverly Ann Hollis-Arrington, Cendant Mortgage set forth a notarized substitution of trustee. Cendant and Fannie Mae knew that this was false.

51. Defendants misrepresented the truthfulness of being the beneficiary with the full knowledge that this was false. Defendants induced Plaintiff's mother to justifiably rely on this misrepresentation, where by she filed 3 bankruptcies in an

attempt to save our home. Thereafter, this plaintiff relied on the misrepresentation and attempted to avoid the sale of the family home by bankruptcy and attempted refinancing.

52. Plaintiff, Crystal Monique Lightfoot was injured in her credit and the loss of her home as a result of the misrepresentation.

53. Plaintiff, Crystal Lightfoot alleges that Cendant Mortgage was without power to substitute a new trustee, as they were the "servicer" of the loan at the time the substitution was recorded and without power to substitute a trustee under the deed of trust in which they assigned all beneficial interest to Fannie Mae when the loan was purchased in September 1999. Therefore, Attorneys Equity was not the trustee and had no power to hold the trustee sale of property located at 7106 McLaren Ave. West Hills, Ca

54. Plaintiff, Crystal Monique Lightfoot "ONLY", asserts that she is the person who has title to the property located at 7106 Mclaren ave, West Hills, Ca. Plaintiff asserts that the aforementioned property had been deeded to her by her mother, Beverly Hollis-Arrington by quite claim deed on September 11, 2000.

55. Plaintiff, Crystal Monique Lightfoot, asserts that Cendant Mortgage falsified the notarized the document filed with the Los Angeles County recorder, stating that "Cendant Mortgage Corporation was the "Beneficiary", when in fact, Cendant Mortgage was the "SERVICER" of the loan, and Fannie Mae

was the beneficiary under an assignment which occurred in September 1999.

56. Plaintiff, Crystal Monique Lightfoot, asserts that when the sale of the property located at 7106 Mclaren Ave, West Hills, Ca was transferred to Ed Feldman And Harold Feldman, by a trustees deed On June 29, 2001, Alleged trustee "Attorneys Equity National Corporation" was not the trustee and had no power to transfer ownership from Plaintiff.

57. Plaintiff, Crystal Monique Lightfoot "ONLY", claims an "ADVERSE CLAIM", in the property commonly known as: 7106 McLaren Ave, West Hills, Ca. The legal description of the property in which plaintiff, Crystal Monique Lightfoot claims "ADVERSE CLAIM" to is: Lot 52 of tract 21399, in the city of Los Angeles, as per map recorded in book 601 pages 42 to 45 inclusive of maps, in the office of the county recorder of said county. Except therefrom all oil, gas mineral and hydrocarbon substances lying below a depth of five hundred (500) vertical feet from the surface of said land but without right of entry to or for said surface, as granted to Morris Kawin, by deed recorded November 26, 1956 in book 52936 page 162, official records, "THE TITLE TOWHICH THIS PLAINTIFF CLAIMS ADVERSE POSESSION.

58. Plaintiff, Crystal Monique Lightfoot, seek a determination as of July 18, 2002 as to her "CLAIM OF ADVERSE POSESSION", title, which is now held by "ROBERT MATTHEWS", a married man.

59. Plaintiff, Crystal Monique Lightfoot "ONLY, alleges that defendant Robert Matthews claim an adverse interest in the aforementioned real property owned by plaintiff, Crystal Monique Lightfoot, that such claim is without right, and that the defendant, Robert Matthews have no estate, title or interest in the property.

SLANDERER OF TITLE: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE AND ATTORNEYS EQUITY NATIONAL CORPORATION

60. Plaintiff, Crystal Monique Lightfoot, "ONLY" repeats and repleads paragraph 1 through 31 as though fully set forth in this pleading.

61. On September 16, 2000, Defendants, Cendant Mortgage Corporation, Fannie Mae and Attorneys Equity Corporation caused to be published a trustee's deed granted to "Cendant Mortgage Corporation". The publication was false the defendants knew it to be false, and made the publication without regard to its truthfulness.

62. Defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorneys Equity National Corporation maliciously published and caused to be published a statement disparaging to the title of this Plaintiff, the statement was reasonable understood to cast doubt upon the existence of this Plaintiffs interest in the property located at: 7106 McLaren Ave, West Hills, CA 91307, as a result of the malicious publication, this Plaintiff suffered

damages in the loss of more than $50,000.00 in equity in the property.

63. Defendants succeeded in casting a legal cloud on the title of the property. Although the sale was "VOIDED" by a pending bankruptcy filed by this Plaintiff, defendants did not rescind the trustees deed for a period of five months, September 16, 2000 through February 6, 2001, therefore the title was not restored to this Plaintiff and there was no way to refinance the property as the title had been vested to "CENDANT MORTGAGE" by the trustee's deed. This action was malicious and calculated to deprive this plaintiff of her interest in the aforementioned property.

64. Defendants recording of the trustees deed dated September 16, 2000 made a false claim to the real property located at 7106 McLaren Ave, West Hills, Ca and was disparaging, as it clouded the title on the property. The document was untrue.

NEGLEGENT MISREPRESENTATION: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: ATTORNEYS EQUITY NATIONAL CORPORATION

65. Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington, repeats and repleads paragraphs 1-31 as though fully set forth in this pleading.

66. Plaintiff, Crystal Monique Lightfoot, talked with Andrea Jenkins, of Cendant Mortgage foreclosure department on or about October 23, 2000. Plaintiff

explained that the property located at 7106 McLaren had been quite deeded to her by her mother and Plaintiff, Beverly Hollis-Arrington.

67. Ms. Jenkins misrepresented to this plaintiff that she was postponing a trustee sale set for early November 2000, this would give plaintiffs a chance to refinance their home.

68. Ms. Jenkins had no reasonable grounds for believing this representation to be true as she was at all times aware that "Attorney's Equity" had held a trustee's sale on the property on September 16, 2000 in violation of the automatic stay, and transferred the title of the property to "CENDANT MORTGAGE CORPORASTION" and ratified by Fannie Mae.

69. Ms. Jenkins, who represented Cendant Mortgage and Fannie Mae, intended these plaintiffs to rely on this misrepresentation and not seek the help necessary to restore the property and the liens to the status quo, as envisioned by civil code 1058.5(b).

70. Plaintiffs did so justifiably rely on the misrepresentation that the property was in the name of plaintiff, Crystal Lightfoot, and sought refinancing on the property. Plaintiffs were totally unaware that the property had been transferred and remained in the name of Cendant Mortgage Corporation.

71. As aproximate cause of this misrepresentation Plaintiffs were denied all request to refinance the

property although they could find no reason for these denials. Plaintiff suffered damages by lost the equity valued at more than $50,000.00 in the property located at 7106 Mclaren Ave, West Hills, Ca

CIVIL CONSPIRACY: AGAINST: CENDANT MORTGAGE CORPORATION: FANNIE MAE: AND ATTORNEYS EQUITY NATIONAL CORPORATION.

72. Plaintiff, Crystal Monique Lightfoot "ONLY", repeat and replead paragraphs 1-31 as though fully set forth in this pleading.

73. Plaintiff Crystal Monique Lightfoot "ONLY" alleges, That defendants, Cendant Mortgage Corporation, Fannie Mae, and Attorney Equity National Corporation formed an operation of conspiracy in furtherance of a common design to injure Plaintiff, Crystal Monique Lightfoot. Plaintiff, Crystal Monique Lightfoot, further alleges that the defendants, Cendant Mortgage, Fannie Mae, and Attorneys Equity National Corporation owed a legal duty of care in foreclosing on the Plaintiffs property located at 7106 McLaren Ave, West Hills, Ca, that aforementioned defendants breached that duty, and as a result, injured this Plaintiff by loss of income, and loss of equity in the property.

74. Plaintiff Crystal Monique Lightfoot, further alleges that the acts of the conspiracy were unlawful, as to racial discrimination, and fraud,

that the aforementioned defendants set out to willfully discriminate against the Plaintiffs as "BLACK" consumers and perpetrate predatory lending on said plaintiffs, by treating the plaintiff, Beverly Hollis-Arrington's loan application differently then "WHITE" applicants, and misusing the foreclosure procedure by way of fraud to purposely publish false statements.

75. Plaintiff, Crystal Monique Lightfoot, further alleges that each of the aforementioned defendants participated directly or indirectly in the conspiracy and approved and or ratified the acts of the other co-conspirators.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS: AGAINST: CENDANT MORTGAGE: FANNIE MAE: AND ATTORNEY EQUITY NATIONAL CORPORATION

76. Plaintiffs allege that it was despicable conduct and a willful and conscious disregard for the Plaintiffs rights for defendants, Cendant Mortgage, Fannie Mae and Attorney Equity National Corporation to wrongfully foreclose on the home of the plaintiffs, perpetrate racial discrimination on the plaintiffs, withhold the filing of the rescission of the trustee's deed from a period between September 16, 2000 to February 6, 2000.

77. It was despicable conduct and willful and conscious disregard for plaintiffs rights for the aforementioned defendants to mislead the plaintiffs on or about October 22, 2000 to believe that the property located at 7106 McLaren Ave, West

Hills, Ca, was still in the name of Crystal Monique Lightfoot, and prevent these plaintiffs from refinancing the aforementioned property.

78. It was despicable conduct and a willful and conscious disregard for the plaintiffs right for the aforementioned defendants with knowledge that the beneficiary was not "Cendant Mortgage" but "Fannie Mae" to willfully record a false substitution in order in a conspiracy to violate California's civil code section 2924 by way of fraud.

79. OPPRESSION (OPPRESSIVE) The despicable conduct of the defendant as set forth above, subjected both plaintiffs to cruel and unjust hardship in conscious disregard of plaintiffs rights for the reasons set forth hereinabove.

80. FRAUD (FRAUDLENT) because defendants, Cendant Mortgage and Fannie Mae intentionally misrepresented to Plaintiffs that the title had not been disturbed and that the plaintiffs were free to obtain refinancing on the property located at 7107 McLaren Ave, West Hills, Ca, while knowing full well that they had help a trustee sale in violation of the automatic stay and willfully withheld restoring the title and encumbrances to the status quo immediately upon learning that the sale had been "INVALIDADTED", was extreme and outrageous conduct unacceptable in a civilized society in which obtaining a real estate loan is an essential element of home ownership. The conduct was intended (or the conduct was so grossly negligent

was to constitute intentional conduct) to cause severe emotional distress and did in fact cause severe emotional distress to plaintiffs.

81. As a proximate result of the conduct of the defendants, and each of them, Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington suffered nervousness, crying spells, sleeplessness all requiring medical treatment and resulting in medical expenses, loss of income, loss of equity in property, loss of property, and general damages all according to proof but in an amount clearly in excess of $25,000.00.

82. The defendants conduct constitute malice, oppression, and fraud as defined in the California Civil Code section 3294, and Plaintiffs should recover, in addition to actual damages, damages to make an example of and punish defendants.

PRAYER FOR JUDGMENT

FIRST CAUSE OF ACTION–WRONGFUL FORECLOSURE

1. For voiding of the trustees deed and restoring a valid and marketable title to Plaintiff, Crystal Monique Lightfoot, and damages in excess of $25,000.00

2. SECOND CAUSE OF ACTION–VOIDING OF TRUSTEES DEED.

3. THIRD CAUSE OF ACTION–FRAUD AND DECIET–For damages in am amount according to proof but in excess of $25,000.00.

4. RACIAL DISCRIMINATION/ VIOLATION OF THE UNRUH ACT–For treble damages in an amount according to proof but in an amount in excess of $25,000.00.

5. VIOLATION OF C.C. 2924 BY FRAUD–"VOIDING" of the trustee's deed. for damages in an amount in excess of $25,000.00; for punitive damages, compensatory damages.

6. STRNDER OF TITLE–For damages in an amount according to proof but in excess of $25,000.00, compensatory damages, punitive damages.

7. NEGLEGENT MISREPRESENTATION–For general damages, punitive damages, exemplary damages, in an amount according to proof but in

excess of $25,00.00, ACTUAL DAMAGES, exemplary damages, punitive damages, for damages according to proof.

8. CIVIL CONSPIRACY–For general damages in excess of $25,000.00

9. ADVERSE POSESSION–DECLATORY RELIEF IN THE FORM OF RESTORING A MARKETABLE TITLE TO PLAINTIFF, CRYSTAL MONIQUE LIGHTFOOT.

VERIFICATION BY PLAINTIFFS

Plaintiffs, Crystal Monique Lightfoot and Beverly Hollis-Arrington reside in the state of California. Our address is 22912 Hartland Street, West Hills, Ca 91307. We are the Plaintiff in this action and make this affidavit: That we have read the foregoing Verified Complaint and are informed and believe that the matters stated herein are true.

We declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 18, 2002

BY: /s/ CRYSTAL MONIQUE LIGHTFOOT
CHRYSTAL MONIQUE LIGHTFOOT

BY: /s/ BEVERLY HOLLIS-ARRINGTON
BEVERLY HOLLIS-ARRINGTON

" DEMAND FOR JURY TRIAL"

CRYSTAL MONIQUE LIGHTFOOT
BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
TEL: (818) 999-3561
FAX: (818) 316-3359

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, vs. CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION,	Case No.: CV-02-6568 RSWL (RNBx) EX PARTE APPLICATION TO REMAND CASE BACK TO THE SUPERIOR COURT: THE OBJECTION TO REMOVAL BY BOTH PLAINTIFFS: THE DECLARTIONS OF: CRYSTAL MONIQUE LIGHTFOOT: AND BEVERLY HOLLIS-ARRINGTION IN SUPPORT THEREOF; IN THE ALTERNATIVE; IF REMAND IS DENIED A REQUEST TO TAKE*

* This document is presented as filed, all errors are so in the original.

Defendant

INTERLOCUTORY APPEAL FOR GOOD CAUSE SHOWN.

NOW COMES PLAINTIFFS, CRYSTAL MONIQUE LIGHTFOOT AND BEVERLY HOLLIS-ARRINGTON, IN PRO SE AND WITHOUT THE AID OF COUNSEL, TO FILE THIS EX PARTE MOTION TO REMAND THE CASE IDENTIFIED IN THE SUPERIOR COURT AS LC061596.

On the evening of August 22, 2002, Plaintiffs received a copy of the notice to remove, from Counsel for Fannie Mae and Cendant Mortgage Corporation. The pleading did not contain a case number from the District Court. Plaintiffs notified all Defendant by faxing them notification that this ex parte application would be filed in this office on Friday 8/23/02. On Friday 8/23/02, plaintiffs appeared at the Pro Se office to file an ex parte motion to "REMAND". The clerk found no filing in the District court of the "UNVERIFIED" petition to "REMOVE".

On 8/24/02, Plaintiffs received a joinder with the case number CV-02-6568, although the clerk can find no recorded filing, I refaxed a new notice on 08/25/02 to all defendants.

INTRODUCTION

On July 18, 2002, Plaintiffs, Lightfoot and Arrington file the case herewith discussed in the Superior Court, in the Van Nuys Superior Court. The causes of action are "ALL" State causes of action,

there is not a "DIVERSITY of CITIZENSHIP" question and there are "NO" government defendants. Jurisdiction "CLEARLY" lies in the State Court.

All Defendant, were properly served and the responsive pleading of Attorney's Equity Corporation was due on 08/22/02, Cendant Mortgage Corporation responsive pleading is due 08/23/02, Fannie Mae's responsive pleading is due on 08/24/02.

FANNIE MAE'S FEDERAL CHARTER DOES NOT CONFER AUTOMATIC FEDERAL JURISDICTION WITHOUT A FEDERAL QUESTION OR A CLAIM OF DIVERSITY FROM THE PLAINTIFFS

Fannie Mae has, with "Malice" and forethought, removed this matter from the State Court sighting, USCS title 28 section 1441 as their authority to remove, under their federal charter. However, Fannie Mae is also governed by 28 U S C S, section 1349, which reads in relevant part:

The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the Owner of more than one-half of its capital stock.

"FANNIE MAE" is a private, shareholder owned company. Fannie Mae was created by Congress in 1938 to bolster the housing industry during the Depression. At that time Fannie Mae was part of the Federal Housing Administration (FHA) and authorized to buy only FHA-insured loans to replenish lender's supply of money.

In 1968, Fannie Mae became a private company operating with private capital on a self-sustaining basis. (*See* exhibit "A") Fannie Mae cannot erroneously hold itself out as an incorporated agency "OWNED" by the United States Government.

USCS 28 SECTION 1441 (a) REQUIRES A "VERIFIED PETITION"

USCS 28 section 1441 (a) requires "FANNIE MAE" to "Verify" their petition, consistent with Rule 11 of the Federal Rules of Civil Procedures. Petition has to conform to requirements of law. *Sewing Machine Cos.* (1874) 85 US 553, 21 L Ed 914

ATTORNEYS EQUITY CANNOT JOIN IN THIS MATTER AS THRIR THIRTY DAY HAS EXPIRED FOR THE PURPOSE OF REMOVAL

As of 8/26/02, Plaintiffs have no creditable evidence that this action has been filed with the District Court, however, as of 8/22/02, Attorneys Equity Nation Corporation's thirty days were up. If this "UNVERIFIED PETITION" is just being filed on 08-26/02, Fannie Mae's time has expired to file the "VERIFIED PETITION."

THE IMPROPER AND "BAD FAITH" REMOVAL OF THIS CASE FROM STATE COURT BY FANNIE MAE AND CENDANT MORTGAGE AND THE VIOLATION OF PLAINTIFFS CONSTITUTIONAL AND CIVIL RIGHTS

In general, under 28 USCS section 1441(a), actions may properly be removed from State to federal

court only if Federal District Court would have original jurisdiction over claim in suit. *Jefferson County v Acker*_(1999, US) 144 L Ed 408, 119 S Ct 2069, 99 CDOS 4794, 99 Daily Journal DAR 6179, 1999 Colo J C A R 3766, *reh den* (1999, US) 144 L Ed 2d 826, 120 S Ct 23. Here, there is nothing that vest jurisdiction in the federal Court. The only possible weak link is that "Fannie Mae" A private Corporation with the federal charter, which trades on the NYSE, is involved. There is "NO" federal question, "NO" diversity issues, and "NO" government employees. In enacting 28 USCS section 1441 (a) Congress intended to limit, not extend removability. *Wilkins v Renault Southwest, Inc.* (1964, ND Tex) 227 F Supp 647

Removal statues are to be strictly construed in light of congressional purpose generally to restrict jurisdiction of federal courts on removal. *Rivera v Federacion de Musicos de Puerto Rico, Inc.* (1974, DC Puerto Rico) 369 F Supp 1169, 85 BNA LRRM 2509, 73 CCH LC P 14387.

DEFENDANT ACTIONS ARE SENISTER IN NATURE AND ATTEMPTS TO MAKE A FURTHER MOCKERY OF THE JUDICIAL SYSTEM BY ATTEMPTING TO STEER THIS CASE TO A COURT THAT THEY CONSIDER FAVORABLE TO THEM

Defendant have removed in "BAD FAITH" this case from State Court without following any of the plain language if title 28 section 1441. Plaintiff, Beverly Ann Hollis-Arrington would state for the record that she is currently involved in two appeals, which have been disposed of favorably to these defendant by

Judge Marshall. Plaintiff, Beverly Arrington, states for the record that one issue which will be raised on appeal, consist in part of the ruling by Judge Marshall in "NON-RELATED" case number CV-00-11125CBM. In the courts ruling to set aside the default of Cendant Mortgage who, was represented then and now by attorney, Suzanne Hankins, the court completely "IGNORED" the docketed entries and the file, opting instead to adopt an erroneous position taken by Ms. Hankins. This represents only a small sampling of what Plaintiff, Beverly Arrington, will allege on appeal as prejudicial and what appears to be a deliberate and well thought out attempt to violate her constitutional civil and personal rights, of Plaintiff Beverly Hollis-Arrington.

THIS MATER SHOULD BE REMANDED IMMEDIATELY. BACK TO THE STATE COURT TO AVOID ANY FURTHER PREJUDICE TO BOTH PLAINTIFFS.

Plaintiffs and both of them, request that this matter be returned to State court immediately, in light of the fact that there is "NO FEDERAL JURISDICTION". The court has a duty to inquire into jurisdiction at all stages of case whether parties raised question or not. *Rosenbaum v Bauer* (1887) 120 US 450, 30 L Ed 743, 7 S Ct 633; American United Life Ins. Co. (1941, DC NJ) 40 F Supp 1; *Asbury v New York Life Ins. Co.* (1942, DC Ky) 45 F Supp 513; *Bullock v United States* (1947, DC NJ) 72 F Supp 445.

DEFENDANT HAVE FILE THIS "BAD FAITH" REMOVAL IN AN ATTEMPT TO STEAR THE JUDICIAL PROCESS, TO A COURT WHICH

APPEARS TO FAVORABLE TO THEM, IN VIOLATION TO BOTH PLAINTIFFS CONSTITUTIONAL GUARANTIES OF A RIGHT TO A FAIR SUBMISSION, DUE PROCESS AND EQUAL PROTECTION UNDER THE LAW.

IN THE ALTERNATIVE: SHOULD THIS MOTION TO REMAND BE DENIED, PLAINTIFFS REQUEST PERMISSION OF THE COURT TO TAKE IMMEDIATE INTERLOCUTORY APPEAL IN THIS MATTER.

Plaintiffs, Crystal Lightfoot and Beverly Hollis-Arrington, request that if this motion to remand this matter back to the Superior Court be denied, the Court allows the taking of an immediate appeal.

Assuming from Defendants filing of a related case statement, their goal is to manipulate this case so that it will be returned to Judge Marshall, as Judge Marshall is aware, there are two appeals pending in the 9th circuit court of appeals for the cases claimed as related in the name of Plaintiff, Beverly Ann Hollis-Arrington. Plaintiff, Arrington has asked the 9th circuit to shorten the briefing schedule, in case number CV-01-5658 for good cause shown with this in mind and in the interest of "JUSTICE", Plaintiffs and both of them seek permission for appeal of the interlocutory order, so that this appeal may be consolidated with the current appeals pending. Plaintiff Arrington has been advised by the 9th circuit court of appeals, that should this request be denied with this brief, she may move for permission of the 9th circuit to hear the appeal of the remand order. Plaintiffs stress the tremendous expense incurred in

their attempts to achieve "JUSTICE" in these matters, we are not a multi-billion dollar "CORPORATION", such as Fannie Mae, nor are we a multi-million dollar "CORPORATION" such as Cendant, however, we are determined that we will have a fair submission at whatever the monetary cost

Respectfully submitted,

DATED: August 22, 2002

BY: /s/ Crystal Monique Lightfoot

BY: /s/ Beverly Hollis-Arrington

DECLARATION OF CRYSTAL MONIQUE LIGHTFOOT

I Crystal Monique Lightfoot declare:

1. I am over the age of 18 years old and I am a Plaintiff in this action

2. I reside at 22912 Hartland Street West Hills, California.

3. I have personal knowledge of the facts contained within this declaration, and if called upon to do so I can and will testify to such.

4. I have never been a party to any action except this one in the Federal Court of any jurisdiction.

5. The causes of action referred to in my complaint are as a result of my constitutional right to litigate my own interest against these defendants.

6. I do not consent to any transfer to the Federal Court, and ask that this matter be returned to State Superior court to determine the issues on their merits.

7. Each day I must fight the ridiculous claims of these defendants, causes me additional prejudice and injury.

I declare under the penalty of perjury, under the laws of the United States of America that foregoing is true and correct.

DATE: August 22, 2002

BY: /s/ Crystal Monique Lightfoot

THE DECLARATION OF BEVERLY ANN HOLLIS-ARRINGTON

I Beverly Ann Hollis-Arrington declare:

1. I am the Co-Plaintiff in this action. I am over the age of 18 years old.

2. I reside at 22912 Hartland Street, West Hills, Ca 91307.

3. I have personal knowledge of the facts contained in this declaration, and if called upon to testify, I can and will do so.

4. On July 17, 2002 case number LC061596 was filed in the Superior court of Van Nuys, California.

5. All causes of action contained in the complaint are State causes of action. We carefully examined each defendant to find that all either reside in, or are authorized to do business in California and have a visible presence within the State of California.

6. The causes of action specified in the complaint identified in the complaint with my name as co-plaintiff represent my interest "ONLY".

7. Plaintiff does not agree to the transfer of this matter and does not in any way waive her right make this and any further argument in matter.

8. Plaintiff, Beverly Ann Hollis-Arrington has acted in "GOOD FAITH" at all times to try to resolve the issues in this matter.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 22, 2002

BY: /s/ Beverly Hollis-Arrington

[Filed Clerk, U.S. District Court Feb 20 2003 Central District Of California By Deputy]

[Entered Clerk, U.S. District Court Feb 21, 2003 Central District Of California By Deputy]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISON

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON, Plaintiffs v. CENDANT MORTGAGE CORPORATION dba PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION, Defendants	No CV 02-6568-CBM (AJWx) ORDER GRANTING DEFENDANTS CENDANT MORTGAGE CORPORATION, FANNIE MAE AND MATTHEWS' MOTIONS TO DISMISS; AND REQUEST FOR JUDICIAL NOTICE [Docket Nos. 10 and 12] *

* This order disposed of the motions at Dkts. 10 and 12. The order itself is at Dkt. 59.

The matters before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, are (1) Defendants Fannie Mae and Cendant Mortgage Corporation's Motion to Dismiss (docket #12) and request for judicial notice (docket #13); and (2) Defendant Matthews' Motion to Dismiss (docket #10). The Court GRANTS Defendants Motions to Dismiss after having considered the parties' papers and oral arguments.

JURISDICTION

Subject matter jurisdiction is based upon 28 U.S.C. §§ 1441 and 1446, and 12 U.S.C. § 1723(a) of the Fannie Mae Charter Act.

BACKGROUND OF INSTANT ACTION

The action concerns real property Plaintiffs Crystal Monique Lightfoot ("Lightfoot") (daughter) and Beverly Ann Hollis-Arrington ("Arrington") (mother) previously owned, but which was sold at a foreclosure sale. Arrington first purchased the property at issue. She financed the purchase with a mortgage from Cendant, who subsequently sold the mortgage to Fannie Mae, retaining servicing status. Cendant later repurchased the loan after Fannie Mae determined that the loan did not meet its criteria. Arrington defaulted on her first payment and failed to make any subsequent payments. She then sought a forbearance.[1] No forbearance was ever granted, and

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[1] Arrington asserts that she was promised, then denied, a forbearance. Cendant asserts that it provided her with information about terms which she then failed to meet.

the loan was foreclosed. Thus, Plaintiffs allege deficiencies in the original financing of their purchase of the property and the subsequent foreclosure and foreclosure sale. Plaintiffs assert that they are the true owners of the real property, entitled to relief against lenders Cendant Mortgage Corporation ("Cendant") and Fannie Mae, as well as current record property owner Robert O. Matthews ("Matthews")

On July 18, 2002, Plaintiff filed the instant action in Los Angeles Superior Court in case no: LC061596. Defendant Fannie Mae petitioned to remove the case to federal district court on August 22, 2002.

On August 26, 2002, Arrington filed an application to remand the matter to state court, which was denied on September 5, 2002.

Defendants Cendant, Fannie Mae, and Matthews presently seek dismissal of the action on the basis of res judicata and collateral estoppel. Defendant Matthews, also seeks in the alternative, dismissal of the action for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6).

PROCEDURAL HISTORY OF RELATED ACTIONS

A. *Beverly Ann Hollis-Arrington v. Cendant Mortgage Corporation, et al., CV 00-11125 CBM (AJWx) ("first action")*

On October 18, 2000, Arrington filed an action in this Court against Defendant Mortgage Corporation and United Guaranty Insurance Company, alleging four causes of action: breach of covenant of good faith and fair dealing, fraud and deceit, negligence, and intentional infliction of emotional distress.

On January 5, 2001, Arrington applied for a temporary restraining order to prevent the foreclosure sale of her property. On January 10, 2001, the Court set Arrington's application for hearing on January 29, 2001, and also ordered that the non-judicial foreclosure sale of the real property be postponed by Cendant until February 6, 2001, a date after the hearing on Arrington's application.

On January 29, 2001, a hearing was held, and on February 1, 2001, the Court issued its Order denying Arrington's application.[2] On February 5, 2001, Arrington filed a Notice of Appeal with the Ninth Circuit Court of Appeals of the Court's order. On July 10, 2001, the appeal was dismissed by the appellate court.

During the pendency of the case, Plaintiffs Lightfoot and Arrington filed bankruptcy petitions. Therefore, the district court case was subject to an automatic stay and was removed from this Court's active calendar on May 5, 2001. On May 25, 2001, Cendant sought and received relief from the automatic stay. The trustee's sale was subsequently held on June 29,

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[2] The Court also set aside a default entered against Defendants Cendant and United Guaranty Insurance.

2001, and the real property was sold to third party purchasers, Ed Feldman and Harold Tennen.

On July 30 and 31, 2001, by stipulation and order, Defendant United Guaranty Insurance was dismissed with prejudice.

On October 21, 2001, the case was returned to the Court's active calendar.

The property was transferred from Arrington to Lightfoot, and then from Lightfoot to herself and Arrington, jointly, while court proceedings were pending.

On May 13, 2002, Cendant filed a motion for summary judgment or, in the alternative, summary adjudication of the issues. Cendant's summary judgment motion was granted on July 15, 2002, and judgment was entered terminating the case.

On July 24, 2002, Arrington filed a Notice of Appeal of the Judgment. The appeal is pending.

B. *Beverly Ann Hollis-Arrington v. Cendant Mortgage Corporation, et al.*, CV 01-5658 CBM (AJWx) ("second action")

On June 27, 2001, Arrington filed a second action against Defendants Cendant, the Fannie Mae Foundation, and First American Title Company. On July 3, 2001, Arrington filed a First Amended Complaint.

On August 16, 2001, defendant First American Title Company was dismissed by Stipulation and Order.

On September 11, 2001, Arrington sought a temporary restraining order to prevent the third party purchasers from evicting her from the property pending the court's determination of her motion to vacate or set aside the foreclosure sale, and a stay pending appeal. On September 14, 2001, Arrington's application was denied. On September 17, 2001, Arrington filed a Notice of Appeal. On November 27, 2001, the appellate court affirmed the district court's order.

On December 3, 2001, Arrington filed a motion to void or to set aside the sale that took place on June 29, 2001 (in the first action). On December 11, 2001, Fannie Mae filed its motion to dismiss.

On February 12, 2002, the Court denied Arrington's motion to set aside the sale, granted in part Fannie Mae's Motion to Dismiss with prejudice, granted to Purchasers' motion to expunge the lis pendens on the Purchasers' title to the property,[3] and Arrington was given leave to file an amended complaint.

On March 12, 2002, Arrington filed a Second Amended Complaint (SAC) against Defendants,

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[3] The third party purchasers were granted leave to intervene on December 4, 2001, to seek a motion to expunge the lis pendens.

Cendant and Fannie Mae, and Attorneys Equity Service Corporation, alleging violations of RICO, the Truth in Lending Act (TILA), Enforcement of Rescission, Real Estate Settlement Procedures Act (RESPA), civil rights 42 U.S.C. § 1983, conspiracy, fraud and deceit, negligent misrepresentation, intentional infliction of emotional distress, violation of California Civil Code section 2924 due to fraud, quiet title, adverse possession and slander of title. Arrington sought: general damages in the sum of $1,000,000, treble damages, exemplary and punitive damages in the sum of $10,000,000, costs of suit, recession of the loan on the property and of the trustee's deed, to invalidate the trustee sale and to offset any balance owed to the lenders.

On March 15, 2002, Defendants Fannie Mae and Cendant filed a motion to dismiss. On May 28, 2002, the Court granted with prejudice, Defendant Fannie Mae's and Defendant Cendant's Motions to Dismiss Plaintiff's RICO, TILA, and Section 1983 claims pursuant to Fed.R.Civ.P. 12(b)(6). *See* Order dated May 28, 2002 (docket #131). The Court declined to rule on the motions to dismiss Plaintiff's state law claims pending responses to the Order to Show Cause why the Court should not dismiss the state law claims having dismissed all federal claims.

On July, 1, 2002, after having received and reviewed the parties' responses to the Courts' OSC, the Court dismissed all remaining state claims against all defendants, as a matter of law or for failure to state a claim. Plaintiff did not provided the Court with any facts suggesting that granting leave to amend would

cure the deficiencies, Plaintiff's clams were dismissed with prejudice. *See* Order dated July 1, 2002 (docket #135). Judgment was entered in favor of Cendant, Fannie Mae, and Attorneys Equity Corporation as to all of Plaintiffs' claims. On July 24, 2002, Arrington filed her Notice of Appeal of the Judgment. The appeal is currently pending.

DISCUSSION

I. Requests for Judicial Notice

A. Standard

Rule 201 of the Federal Rules of Evidence provides that "[a] court shall take judicial notice if requested by a party and supplied with the necessary information." Fed. R. Evid. 201(d). The party requesting judicial notice must show that the fact is "one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Federal courts may take judicial notice of proceedings in other federal courts. *St. Louis Baptist Temple v. F.D.I.C.*, 605 F.2d 1169, 1172 (10th Cir. 1979).

B. Analysis

Defendants request the Court take judicial notice of the (1) entire record from the first action *Beverly Ann Hollis-Arrington v. Cendant Mortgage, et al.*, CV 00-1125 CBM (AJWx); (2) the entire record from the second action *Beverly Ann Hollis-Arrington*

v. Cendant Mortgage, et al., CV 01-5658 CBM (AJWx); (3) the Quitclaim Deed dated September 11, 2000, and recorded September 11, 2000, in the Office of the County Recorder of Los Angeles, California, Instrument No: 00-1422851, transferring title in the subject property from Arrington to Lightfoot; (4) the Quitclaim Deed recorded on February 5, 2001, in the Office of the County Recorder of Los Angeles, California, Instrument No: 01-189024, transferring title in the subject property from Lightfoot to Arrington and Lightfoot; and (5) the Trustee's Deed of Sale dated July 2, 2001, and recorded in the Official Records of the Los Angeles Recorder's Office on July 5, 2001, as Document No: 01-11158333.

The documents are not subject to dispute and are relevant to Defendants' Motions. Accordingly, the Court GRANTS Defendants' Requests.

Plaintiffs request that the court take judicial notice of the following filings from the first action: (1) Cendant's motion for summary judgment; (2) separate statement of undisputed material facts in support of Cendant's motion; (3) declaration of Kevin Glover in support of Cendant's the motion; and (4) Fannie Mae's motion to quash Plaintiff's non-party deposition subpoena.

Plaintiffs' requests are GRANTED.

II. Plaintiffs' Claims are Barred under the Doctrine of Res Judicata

A. Standard

"Res Judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Owens v. Kaiser Foundation Health Plaint, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). The doctrine bars a later litigation when the earlier adjudication (1) involved the same claim or cause of action; (2) reached a final judgment on the merits; and (3) involved the same parties or privies. *Nordhorn v. Ladish Co., Inc.*, 9 F.3d 1402, 1404 (9th Cir. 1993).

B. Analysis

1. Same Claims of Causes of Actions

The requirement that both actions involve the same claim is interpreted broadly. "The Ninth Circuit determines whether or not two claims are the same for purposes of res judicata with reference to the following criteria:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Id. at 1405 (citations omitted). In the instant case, Plaintiffs again challenge Defendants' conduct in connection with the process of Arrington's loan application and the eventual foreclosure of residential property. Plaintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property. Although the current action involves additional or new causes of action, parties[4], and facts[5], it involves the same "transactional nucleus of facts" as the previous actions. *Owens v. Kaiser Foundation Health Plans, Inc.*, 244 F.3d at 714 (central criterion is "whether the two suits arise out of the same transactional nucleus of facts."); *In re Lindsay*, 59 F.3d 942, 952 (9th Cir. 1995) (res judicata applies even if second action involves new evidence of new theories). Plaintiffs' claims allege that the conduct of the defendants in processing the loan and the foreclosure sale were improper and invalid. Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions.

2. Final Judgments were Reached in Prior Actions

A final judgment will have res judicata effect as to all claims that could have been brought in the earlier action. *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d at 713-14 (any claims arising from

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[4] Robert O. Matthews, the new purchaser and current owner of the property.

[5] Cendant improperly substituted a trustee before the foreclosure sale.

same set of facts). The previous judgments entered in the first and second actions as a result of Defendants motions for summary judgment and to dismiss constitute final judgments on the merits. *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.3 (1981) (dismissal for failure to state a claim final judgment for res judicata purposes); *Jackson v. Hayakawa*, 605 F.2d 1121, 1125 n.3 (9th Cir. 1979) (summary judgment final judgment for res judicata purposes).

Plaintiffs contend that because appeals are pending before the Ninth Circuit in both the first and second actions, no final judgment exists to apply res judicata. Plaintiff relies on California's state law of res judicata where a judgment has no preclusive effect until finally disposed of on appeal. *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1439 (9th Cir. 1985). However, while California state law is applied to determine the preclusive effect of California judgments, federal law is applied to determine the preclusive effect of federal judgments. *Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988). Under federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal. *Eichman v. Fotomat Corp.*, 759 F.2d at 1439; *See also Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 88 (1941). Thus, the requirement that the earlier actions result in a final judgment on the merits is met.

3. Same Parties or Privity with Previous Parties

Res judicata only protects or binds those who were parties to, or were in privity with parties, to the earlier actions. *Jackson v. S.I. Hayakawa*, 605 F.2d 1121, 1125 (9th Cir. 1979); *Cunningham et al., v. Gates, et al.*, 312 F.3d 1148, 1155 (9th Cir. 2003), *petition for cert. filed on other issue,* (Jan. 28, 2003)(No. 02-1129). "Privity — for purposes of applying the doctrine of res judicata — is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *In re: Schimmels,* 127 F.3d 875, 881 (9th Cir. 1997) (emphasis in original). "And that, under the circumstances, the [other party] 'should reasonably have expected to be bound by the prior adjudication.'" *Cunningham et al., v. Gates, et al.*, 312 F.3d at 1156. Under the first requirement, Plaintiff Lightfoot's interest are so similar to Arrington's, that Arrington was Lightfoot's "virtual representative". *cf., Id.* Defendant Matthews, as a third party purchaser of the property, is also similar to previous purchasers Feldman and Tennen. Thus, Lightfoot has "succeeded to a party's interest in property" and Matthews, as owner of the property, maintains "interests [that] were adequately represented by [the previous intervenor-purchasers of the property] in the original suit." *In re: Schimmels,* 127 F.3d at 881.

Because two earlier actions involved the same claim, the same parties or parties in privity with previous parties, and final judgment on the merits was

entered, the doctrine of res judicata applies. Accordingly, Defendants Motion to dismiss is GRANTED.[6]

III. Defendant Mathews alternative Motion to Dismiss for Failure to State A Claim is GRANTED.

A. Standard

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to seek dismissal of a complaint, which "fail[s] to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). A motion to dismiss for failure to state a claim must be denied unless it appears that the plaintiff can prove no set of facts that would entitle her to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 796-97 (9th Cir. 1996). Dismissal is appropriate if the plaintiff fails to assert a cognizable legal theory or to allege sufficient facts under a cognizable legal theory. *Balisteri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). All material factual allegations in the complaint are assumed to be true and construed in the light most favorable to the plaintiff. *Cooper v. Pickett*, 137 F.3d

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[6] Defendants similarly argue that Plaintiffs are barred by "collateral estoppel". Collateral estoppel or "issue preclusion" "attaches only '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.'" *Amadeo v. Principal Mutual Life Insurance Company*, 290 F.3d 1152, 1159 (9th Cir. 2002). These issues were previously litigated. For the same reasons set forth for the Court's dismissal based on the doctrine of res judicata, the Court alternatively GRANTS Defendants motions to dismiss based on collateral estoppel.

616, 622 (9th Cir. 1997); *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1152 (9th Cir. 1989).

B. Analysis

Plaintiff Lightfoot alleges Defedants foreclosure was fraudulent. Thus, Attorneys Equity was not the trustee and had no power to hold the trustee sale of the property. Instead, Plaintiff Lightfoot asserts that she is the person who has title to the property. Thus, Defendant Matthews who claims rights to the property is without right, and has no estate, title, or interest in the property. Defendant Matthews argues that Plaintiffs failed to state a claim against him as he is a bona fide purchaser of the property.

Based upon the history of the present and previous related cases, the Court's rulings, and the instant finding that res judicata applies, there is no basis for Plaintiffs claim against Defendant Matthews. Defendant Matthews' alternative motion to dismiss, is GRANTED, with prejudice.

CONCLUSION

Defendants have demonstrated (1) that there were two previous actions regarding the same claim involved in this case, between the same parties or parties in privity with previous parties, which were resolved on the merits; and (2) that Plaintiffs have failed to state a claim against Defendant Matthews upon which relief can be granted;

Defendants Motions to Dismiss are GRANTED.

IT IS SO ORDERED

DATE: February 20, 2003

/s/ Consuelo B. Marshall, Chief Judge
United States District Court

[FILED CLERK, U.S. DISTRICT COURT AUG 29, 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY]

[ENTERED CLERK, U.S. DISTRICT COURT SEP 2, 2003 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISON

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON,	No CV-02-06568-CBM (AJWx)
Plaintiffs v. CENDANT MORTGAGE CORPORATION dba PHH MORTGATE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORTATION, Defendants	**ORDER DENYING PLAINTIFF'S MOTION TO SET ASIDE THE JUDGMENT** [Docket No. 70] *

* This order disposed of the motions at Dkt. 70. The order itself is at Dkt. 79.

The matter before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, is Plaintiff Beverly Ann Hollis-Arrington's Motion to Set Aside the Judgement Due to Fraud and Newly Discovered Evidence.

The Court having considered the parties' papers hereby DENIES Plaintiff's Motion to Set Aside the Judgment.

BACKGROUND

Plaintiff Beverly Ann Hollis-Arrington ("Arrington") filed a total of three cases against Defendant Cendant Mortgage Corporation that have been decided by this Court. The instant case is the third of the three cases. Plaintiff has filed a motion to set aside the judgment in each of the three cases.

This action arises out of a loan to refinance an existing first and second mortgage on real property located at 7106 McLaren Avenue, West Hills, California (the "Property"). In August 1999, Cendant funded a loan in the about of $180,400 secured by the Property on behalf of Plaintiff. Almost immediately after funding, Cendant sold the loan to the Federal National Mortgage Association ("Fannie Mae") in the secondary market. Cendant retained the servicing rights. Plaintiff's loan went into default in October 1999. In December 1999, Cendant provided Plaintiff with information regarding programs to assist in curing delinquency. Plaintiff then requested a forbearance agreement from Cendant. In February 2000, Cendant acknowledged Plaintiff's request and sought additional information, including a financial

statement and hardship letter. Ultimately, Plaintiff was not given a forbearance agreement based on Plaintiff's financial status and inability to provide a sufficient contribution to any forbearance. In August 2000, Cendant repurchased the loan from Fannie Mae because it failed to meet Fannie Mae requirements.

On October 18, 2000, Arrington filed the first action (CV 00-11125) against Defendant Cendant Mortgage Corporation ("Cendant") and United Guaranty Insurance Company ("United"), alleging four claims: breach of the covenant of good faith and fair dealing, fraud and deceit, negligence, and intentional infliction of emotional distress. Plaintiff's claims appear to be predicated on the contention that Cendant agreed to provide Plaintiff with a forbearance agreement when she fell behind on her mortgage payments and subsequently refused to enter into such an agreement.

On June 27, 2001, Arrington filed the second case against defendants (CV 01-5658). In the second case, Arrington alleged that Cendant, in a conspiracy with Fannie Mae, sought to make mortgage loans to non-creditworthy black borrowers for the sole purpose of causing the borrowers to default on the loans and enabling Fannie Mae to foreclose and acquire the real property. Arrington alleged violations of RICO, the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), 42 U.S.C. § 1983, fraud, negligent misrepresentation, intentional infliction of emotional distress, intentional infliction of California foreclosure status, quiet title , and slander of title.

On May 28, 2002, in the second case, the Court granted Cendant's motion to dismiss Arrington's federal claims for violation of RICO, TILA, RESPA and 42 U.S.C. § 1983. On July 2, 2002, the Court entered judgment in favor of Cendant on all of Arrington's claims.

On July 15, 2002, in the first case, this Court granted summary judgement for Cendant and entered judgement.

Arrington and her daughter Monique Crystal Lightfoot filed the instant case, the third case, on July 18, 2002 in Los Angeles County Superior Court naming Cendant, Robert O. Matthews, and Attorneys Equity National Corporation. The third case reiterated the same contention as the second action, the Cendant conspired to provide loans to uncreditworthy black applicants. The third case was removed to federal court and on February 20, 2003, the Court granted Cendant's motion to dismiss the third action on the grounds of *res judicata* and collateral estoppel.

Arrington filed Noticed of Appeal in each of these three cases. The Ninth Circuit Court of Appeals affirmed the judgment in the first two cases and dismissed the third appeal for lack of jurisdiction.

Following these decisions by the Ninth Circuit, on June 4, 2003, Arrington filed a "Motion Pursuant to Rule 60(b)(2)(3) of the Federal Rules of Civil Procedure to Set Aside the Judgment due to Fraud and Newly Discovered Evidence" in each of the three

cases. Defendant Cendant Mortgage filed a timely opposition to Plaintiff's motion and a timely reply was filed.

LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) provides that:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (2) newly discovered evidence which by due diligence could not have been discovered in time to more for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party ... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

Fed.R.Civ P.60(b).

A party making a Rule 60 motion must show the evidence (1) existed at the time of trial or when the order was entered; (2) could not have been discovered through the exercise of due diligence; and (3) was of such magnitude that the production of it would have been likely to change the disposition of the case. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 210-211 (9th Cir. 1987). A motion under 60(b) must be made within one year of the

entry of the judgment or order that the party seeks to set aside. *See Three Boys Music Corp. v. Bolton*, 212 F.3d 477, 488-89 (9th Cir. 2000) (district court did not abuse discretion in denying motion as untimely where motion was filed fourteen days after deadline for post-trial motions). A pending appeal will not toll the one-year period. *See Corn v. Guam Coral Co.*, 318 F.2d 622, 629, n. 13 (9th Cir. 1963).

DISCUSSION

Plaintiff moves to set aside the judgement in this case, pursuant to Rule 60(b)(2) and (3), on the following newly discovered evidence and alleged act of fraud by defendants: (1) A "Substitution of Trustee" document recorded in the Los Angeles County Recorder's office on April 24, 2000; (2) A trustee's deed recorded in the Los Angeles County Recorder's office on September 21, 2000 for assessor's parcel number 2026-003-013; (3) A "Notice of Rescission of Trustee's Deed Upon Sale" recorded on February 8, 2001. Plaintiff attached a Lexis-Nexis printout of these recorded documents to her declaration in support of the motion.

A. Plaintiff's Alleged "Newly Discovered Evidence and Fraud" Could Have Been Discovered At Or Prior To The Time Judgment Was Entered.

The Court issued an Order dismissing Plaintiff's Complaint in this action on February 20, 2003. First, it is clear from the face of the "newly discovered evidence" and alleged fraud that these documents and the fraudulent inferences plaintiff attempts to make from them, could have been discovered through the

exercise of diligence prior to the entry of judgment. The documents are public recordations available to members of the public that seek their production. Additionally, plaintiffs own submission of the documents as printouts from Lexis-Nexis indicates that, prior to entry of judgement in this proceeding, plaintiff could have obtained copies of these documents.[1]

Because plaintiff could have discovered the facts constituting the "new evidence" and "fraudulent acts" prior to the entry of judgment, plaintiff has failed to demonstrate that the judgment should be set aside pursuant to Rule 60(b).

B. Production of the Alleged New Evidence Would Not Have Changed The Outcome of the Case.

Even if plaintiff could demonstrate that the evidence produced in her motion could not have been discovered upon the exercise of due diligence, she must demonstrate that the evidence submitted is of such a magnitude as to change the outcome of this case. Upon review of the evidence submitted, the Court finds that production of these documents would

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[1] Additionally, plaintiff's complaints in the second case and this case indicate that plaintiff was aware of the underlying acts by defendants (substitution of trustee, trustee's deed on the parcel, and rescission of trustee's deed) at the time those cases were filed. *See* CV 01-5658, Second Amended Complaint ¶ 42; CV 02-6568, Complaint ¶ 14, ¶ 19, ¶ 67. Therefore, this motion was not raised within a "reasonable time" after entry of judgment because plaintiff had this information since the filing of this case. *See Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981).

not have changed the Court's finding that defendants were entitled to dismissal of plaintiff's claims in this action.

CONCLUSION

For the Foregoing reasons, the Court DENIES Plaintiff's Motion Pursuant to Rule 60(b) to Set Aside The Judgment.

IT IS SO ORDERED.

DATE: August 29, 2003

/s/ CONSUELO B. MARSHALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BEVERLY ANN HOLLIS-ARRINGTON; Plaintiff, Vs. CENDANT MORTGAGE CORP; FANNIE MAE CORPORATION; ROBERT O. MATTHEWS (A MARRIED MAN): ATTORNEYS EQUITY NATIONAL CORPORATION; Defendants	Case No.: No. CV-02-06568 CBM (AJX) MOTION AND NOTICE OF MOTION PURSUANT TO RULE 60(b): TO SET ASIDE JUDGEMENT; FOR FRAUD UPON THE COURT OR IN THE ALTERNATIVE; AN INDEPENDENT ACTION FOR THE COURT TO SET ASIDE THE JUDGEMENT FOR "FRAUD UPON THE COURT" ***THIS MOTION IS BEING FILED CONCURRENTLY WITH PLAINTIFF'S ANSWER TO THE COURTS ORDER; TO SHOW CAUSE IN CASE

* This document is presented as filed, all errors are so in the original.

NUMBER: 02CV6568 CBM;

AND

MOTION TO SET ASIDE THE JUDGMENTS IN CASE NUMBER 02-CV-6568CBM, FOR FRAUD UPON THE COURT

Courtroom:
Hearing date:

Comes now plaintiff, in pro se and without the advice of counsel, to file this motion pursuant to; F.R.C.P. rule 60(b) to set aside the judgement in the aforementioned case, for fraud upon the court. Or in the alternative; an independent action for "Fraud Upon The Court".

PREFACE

Plaintiff, is filing this motion concurrently with a motion seeking the same relief in cases number 00-Cv-11125CBM, 01-CV-5658CBM, and along with the order to show cause issued by the court in case number 02-CV-6568CBM.

Plaintiff would like to state for the record and to preserve for appeal, in the event this motion is denied the extreme prejudice that has been caused by the actions of these defendant's and their counsel.

Additionally, Plaintiffs alleges that they has suffered a violation of their constitutionally protected rights of their property being taken without due process of law, their right to access the court, and her right to the equal protection of the law by way of the alleged fraud upon the court, perpetrated by these defendants.

INTRODUCTION

In October 2000, a time before the housing bubble busted, and millions of homeowners lost their homes to the unscrupulous actions of banks and lenders, Plaintiff cane to this court seeking the courts intervention, to force Cendant Mortgage to abide by a verbal forbearance agreement made with this plaintiff. In the alternative, Plaintiff sought temporary restraining order, against the immediate sale of her home, for 60 days until Plaintiff could obtain refinancing on the property.

During the time of these negotiations with Cendant Mortgage Corporation (now PHH mortgage) Plaintiff was unaware that her loan was not owned by Cendant Mortgage Corporation, but was instead owned by Fannie Mae, that Cendant Mortgage was the servicer, not the owner of the loan. Cendant Mortgage did not become the owner of the loan until ordered to repurchase 10/2000. Plaintiff will ask this court to keep in mind, that since she first came to this court seeking help to save her home, the United Stated has been plunged into a global recession, created by the housing market. In addition, Fannie Mae has been put into receivership by the U.S. Government, and Cendant Corporation has spun its mortgage unit off to PHH Mortgage.

TIME LINE AS TO THE FRAUD UPON THE COURT

In August 1999 Plaintiff, Hollis-Arrington refinanced her home located at 7106 McLaren Ave., with Cendant Mortgage Corporation. (Successor in interest is PHH Mortgage Corporation). Deed is attached here to as exhibit "A". On or about 60 day after the abovementioned date, the loan was sold on the secondary market to Fannie Mae, and Cendant retained the servicing rights.

On or about January 2000 Cendant Mortgage false and fraudulently declared themselves, the duly appointed and current beneficiary, and then filed a notice of default against the property listed above. On 0r about January 18, 2000, Cendant Mortgage executed a substitution of trustee, which was signed by

one Mark Hinkle, vice president of Cendant Mortgage Corp. and notarized by one Andrea P. Finkle in the State of New Jersey. This false and fraudulent filing, gave Attorney's Equity National Corporation the fraudulent power to notice a trustee's sale (attached hereto as exhibit "B")

Pursuant to C.C. section 2924 and the applicable provisions of the internal code, the trustee was obligated to order a Trustee's sale Guaranty from a title company. This document assures that the lender and trustee are made aware of necessary information regarding the present condition of title, and addresses for notices to all parties of interest.

In that respect, it is unclear how Attorney's Equity could have been duped into holding a fraudulent trustee's. Plaintiff will await their response to this motion for further comment.

On 4/21/2000 Attorney's Equity, utilized its fraudulent appointment as trustee, to notice a trustee's sale for May 11, 2000. Plaintiff, Hollis-Arrington filed her first bankruptcy in response to this fraudulent trustee sale on May 5, 2000. Cendant responded to the bankruptcy court with its demand and the statement that they had conducted a proper foreclosure process as articulated by California's statutory foreclosure scheme. When in fact the filing of the fraudulent substitution of trustee rendered the foreclosure "VOID" as opposed to "VOIDABLE"

On July 11, 2000 Plaintiff Hollis-Arrington filed another bankruptcy to stave off the fraudulently postponed original trustee sale of May 11, 2000.

Plaintiff was never notified of a new sale date, so she filed the bankruptcy as a precaution. The second bankruptcy proved to be equally as fruitless, as now Cendant had added the PMI insurance to the loan which they forgot to add in as part of the HUD-1 calculations.

On September 18, 2000, utilizing the fraudulently recorded substitution of trustee, Attorney's Equity held a trustee sale of plaintiff's property and divested plaintiff of all property rights by way of the fraudulently held trustee sale. Cendant Mortgage sent a real estate agent out to serve a 30 day notice in late September or early October 2000. Plaintiff, Hollis-Arrington filed case number 00-CV-11125 in the U.S. District court in October 2000 to try and force Cendant to honor the verbal forbearance agreement they had entered into with Plaintiff.

Between January 2000 and July 2002, plaintiff(s) were unaware of the fraudulent trustee transfer, and believed in good faith that this was errors which were not tainted by fraud.

These fraudulently recorded documents and the fraudulently conducted trustee sale form the basis of all the cases filed in the U.S. bankruptcy court, the U.S. District Court, the U.S. courts of appeals, the U.S. Supreme Court and the removal of case number 02-CV-6568 CBM. Attorney Hankins used a wide network of attorney's, to perpetrate fraud upon the court in each of these cases. Even after Cendant repurchase the loan from Fannie Mae, they did not restart the

foreclosure process which was mandated by California's statutory foreclosure scheme. Each and every one of the attorney's simply continued to rely on the same fraudulently conducted trustee sale.

In addition plaintiff was forced to live with three bankruptcies on her credit file, which were filed due to the fraud perpetrated and presented to the courts by these defendants, by and through their attorney's.

THE FILING OF THESE DOCUMENTS WERE DONE WITH MAILCE AND FORETHOUGH; THEREFORE NO PRIVILEGE WILL ATTACH

Each and every document related to the foreclosure was acquired by plaintiffs from the Los Angeles county recorder's office. A non judicial foreclosure bears none of the attributes essential for absolute privilege. Though regulated by statute as a matter of public policy, nonjudicial foreclosure is a private procedure involving private parties, occurring pursuant to a private power of sale contained in a deed of trust. (*See generally 4 Miller & Star, supra*§§ 10:179 to 10:180, pp. 547-551.) By definition it does not occur in a judicial proceeding. Hence, on its face it is not covered by the litigation privilege. It also does not occur in an "official proceeding authorized by law" (§ 47, subd. (b)(3)) a category generally reserved for "official, 'i.e. governmental proceedings: that is proceedings involving the government, an agency of official thereof, or quasi-judicial proceeding otherwise reviewable by writ of mandate. (*Eisenberg v. Alameda Newspaper, Inc.* (1999) 74 Cal.App.4th 1359, 1377 [88

cal. Rptr. 2d 802]; see also [***37] (*Garretson, supra,* 156 Cal.App.4th at pp. 1520-1521[non judicial foreclosure is not an official proceeding within the meaning of Code Civ. Proc., § 425.16, subd. (e)(1) and (2)].) [*340]

FRAUD UPON THE COURT

The Ninth Circuit has applied Professor Moore's definition of fraud on the court:

> Fraud Upon the court should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication

An attorney's conduct can be construed as fraud upon the court. The Ninth circuit has concluded that Fraud upon the court includes both attempts to subvert the integrity of the court and fraud by an officer of the court. "*Intermagnetics, 926 F. 2d at 916.*

Plaintiffs alleges that attorney Hankins, attorney Shelton, attorney Gilligan, and the attorney for the interveners, were aware that Cendant Mortgage had deliberately devised a scheme, by using fraud, to thwart the statutory scheme, of California's foreclosure procedure as defined in C.C.P. section 2724, and illegally foreclose on Plaintiff's home. After the fraudulent scheme was interrupted by this Plaintiff's filing

of case 00-CV-11125CBM, defendant Cendant Mortgage hired attorney, Suzanne Hankins and briefed her on how to the fraudulent scheme in court. Attorney Hankins then worked with all of the attorneys who made appearances in all three cases, to present this scheme to this court. Their scheme was deliberately designed to subvert the integrity of the court and defile judicial process.

THE FRADULENT SCHEME BY CENDANT, FANNIE MAE, ET. AL. AND PRESENTED TO THE COURT BY ATTORNEY'S; HANKINS, ET.AL

It has been well established in the numerous cases filed by this Plaintiff(s) and is now an undisputed fact that; the loan which formed the basis of the dispute in this case, was made in October 1999 and, sold Fannie Mae on the secondary market in November of 1999 (30 days thereafter). Plaintiff contacted Cendant Mortgage in February 2000, in an attempt to resolve the delinquency, by entering into a forbearance agreement, and adding the missed payments to the end of the loan.

"PLAINTIFF ASKS THE COURT TO KEEP IN MIND, THAT Hollis-Arrington, CAME TO THE COURT AS A LAST RESORT TO SAVE HER HOME FROM FORECLOSURE. PLAINTIFF BELIEVED IN GOOD FAITH, THAT CENDANT HAD VERBALLY AGREED TO A FORBEARENCE AGREEMENT. AND WITH THAT IN MIND THIS PLAINTIFF CAME TO THE COURT ASKING THAT THIS COURT ORDER CENDANT MORTGAGE TO ABIDE BY THE AGREEMENT, OR IN THE

ALTERNATIVE TO ALLOW THIS PLAINTIFF 60 DAYS TO REFINANCE HER HOME.

California Statutory Foreclosure Procedure As Set Forth By: Civil Code Sections 2934 & 2924

On January 18, 2000 Cendant Mortgage caused to be recorded in the Los Angeles County recorder's office a substitution of trustee. This substitution is governed by section 2934a. (a) (2), which reads in relevant part:

> *A substitution executed pursuant to subparagraph (B) of Paragraph (1) is not effective unless all the parties signing the substitution sign under the penalty of perjury, a separate written document stating the following:*
>
> *(A) The substitution has been signed pursuant to subparagraph (B) of Paragraph (1).*
>
> *(B) None of the undersigned is a licensed real estate broker of affiliate of the broker that is That is the insurer or servicer of the obligation secured by the deed of trust.*
>
> *(C) The undersigned together holds more than 50% of the record beneficial interest of a series of notes secured by the same real property or of undivided interest in a note secured by real property equivalent to a series transaction.*

Attached hereto is a copy of the documents filed in the office of the Los Angeles County recorder's office, and filed by Cendant Mortgage swearing under the penalty of perjury that "Cendant" was the beneficiary of the loan at the time of filing. This was false and fraudulent, Cendant knew it was false and fraudulent and intended that this documents be relied on to substitute the trustee. When, in fact Fannie Mae was the legal beneficiary of the loan.

On May 11, 2000 Cendant's fraudulently appointed Trustee, attempted to hold a trustee sale of the property. The fraudulently appointed trustee (Attorney's Equity) was aware that Fannie Mae was the owner of the loan, yet acted in conspiracy with Cendant Mortgage to falsify the substitution of attorney in order to hold a fraudulent trustee sale of the property.

However, believing that this was a true and properly held trustee sale, plaintiff filed bankruptcy to stop the sale. The trustee sale was postponed and in July 2000, the fraudulently appointed trustee set another trustee's sale date. This sale was postponed under the shame fraudulently executed trustee's deed as the first notice of sale. Cendant and the trustee knew the trustee's deed was fraudulent. The court and this plaintiff relied on the fraudulent trustee's deed.

On 8/23/00, with a bankruptcy in place, Cendant's fraudulently appointed trustee conducted a foreclosure sale of the property. Even after finding out about the bankruptcy stay in place, Cendant recorded

the fraudulently obtained trustee's deed. The deed divested this plaintiff of the title. This Plaintiff was totally unaware of the sale on 8-11-00, and was attempting to refinance the property. Additionally, plaintiff continued to attempt to work the mortgage delinquency out with Cendant Mortgage. Plaintiff at all times, during her attempts to work with Cendant Mortgage was unaware that the title had been divested and that there was no possibility of her refinancing the property. The trustee then filed for another sale in November 2000.

On or about October 18, 2000, plaintiff filed this case in the District Court. Plaintiff filed a request for a TRO to stop, what she believed was a properly conducted foreclosure sale. In September of 2000, Fannie Mae requested Cendant Mortgage repurchase the aforementioned loan. Apparently the loan was repurchased by Cendant Mortgage in late October or early November. However, as of the filing of this case Cendant still had not restored the title to this plaintiff, which was divested in the August 2000 sale. After the filing of this case, Andrea Jenkins agreed to allow this plaintiff 60 days to attempt to refinance her property. In this deceptive agreement, Ms. Jenkins was aware that Cendant had divested the title in August 2000, and there was no possibility of refinancing the property.

ATTORNEY HANKINS, ET. AL & THE FRAUD UPON THE COURT

Attorney Hankins, et. al. were the counsels for the defendants in this case. Fraud Upon The Court

includes both attempts to subvert the integrity of the court and fraud by an officer of the court. "*Intermagnetics, 926 F..2d at 916.* Plaintiff brings this motion as Hankins, Sittler and Wruble are officers of the court. (Courts have the inherent authority to discipline lawyers which "derive from lawyers role as an officer of the court which granted admission"); *Cord v. Smith, 338 F.2d 516, 524 (9th Cir.* 1988) (Internal quotation omitted).

Plaintiffs asserts that the aforementioned attorneys were working with each other to devise a strategy or scheme when Plaintiff(s) initially filed this case in the District Court. Attorney Hankins was the Attorney for Cendant Mortgage at all times during these procedures and was in possession of the records regarding the ownership of the loan. Attorney Hankins also was well aware that the loan had been sold on the secondary market to Fannie Mae; thirty days after Cendant approved the loan to this plaintiff. Attorney Hankins have submitted briefs to this court stating the same knowledge of the sale to Fannie Mae.

There are no transcripts for case number 02-CV-6568CBM, and therefore request the court rely on the pleadings submitted by the counsels in the case. While it is acknowledged by the plaintiff(s), that the beneficiary or owner could have called for a default and trustee sale of the property their property, California's statutory scheme is clear that Fannie Mae was required by statute to originate the default in its name, and appoint the trustee for the sale.

Attorney Hankins, et. al. was aware that their testimony to the court was deliberately meant to mislead the court, subvert the integrity of the court, and it interfere with the judicial power of the court, to issue a ruling based on facts which were true, and not false and fraudulent. Hankins, et. al. was aware of the bankruptcy filings, in this plaintiff attempt to save her home. Attorney Hankins was also aware of the fraudulent documents that Cendant Mortgage filed in May 2000, with the Los Angeles County Recorder's office, (i.e. the substitution of trustee, notice of default, and notice of sale) in order to initiate this fraudulent foreclosure. Attorney Hankins, was aware at all times, along with her fellow attorney's;, that information they were providing to the court was false and fraudulent. (because all the documents filed to initiate the foreclosure process was fraudulently executed)

Attorney Hankins et. al. were aware that Cendant Mortgage, by way of the fraudulently held trustee had recorded a trustee's deed on 9/11/2000, thereby divesting this plaintiff of title to the property. This Plaintiff was totally unaware of this trustee's sale and the divesting of title, and was totally baffled by the sudden non communications of the lender, who was willing to refinance the property.

SUMMARY OF "FRAUD UPON THE COURT" CLAIM

Plaintiff relies on the ruling of; *Hazel-Atlas Glass Co. v Hartford Empire Co.*, 322 U.S. 238, 245-

46, 250, 88 L. Ed. 1250, 64S. Ct. 997 (*1944* (deliberately [**10] planned scheme to present fraudulent evidence constitutes ("Fraud Upon The Court") *overruled on other grounds, Standard Oil Co. of Cal v. United States, 429 U.S. 17, 50 L. Ed. 2d 21, 97 S. Ct. 31 (1976; (Abatti, 859 F. 2d at 118 (Fraud Upon the Court involves unconscionable plan or scheme to improperly influence the court*).

Plaintiff came to this court in a desperate attempt to save her home. She had a "good faith belief "that the true facts would be presented to the court on both sides and that the court would make a fair an impartial determination based on those truths. Instead, the attorneys in this matter intentionally presented false and fraudulent testimony and facts to the court about the state of the default and trustee sale. (based on Calif. Code section 2934a) the fraud committed by Cendant in appointing Attorneys Equity as trustee would have invalidate the entire foreclosure process and caused Cendant to start the process anew, after they had repurchased the loan from Fannie Mae, then appointed a new trustee. Plaintiff was forced into bankruptcy on three occasions based on fraudulent foreclosure documents executed by Cendant and Attorneys Equity. That fraud was then presented to this court as the truth, resulting in an adverse ruling.

This Plaintiff would not have had the need to come to this court if the fraudulent foreclosure had not occurred and she had not been divested of title. Plaintiff had a lender who was willing to make a hard money loan to refinance the property. The documents

are attached hereto as to the fraudulently procured trustee sale.

Submitted,

Date: June 9, 2010 BY: _____

/s/ Beverly Ann Hollis-Arrington

BY: _____

/s/ Crystal M. Lightfoot

[FILED DEC 15, 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT,

Plaintiff,

and,

BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiff - Appellant,

v.

CENDANT MORTGAGE CORPORATION; et al.,

Defendants - Appellees,

No. 03-56580

D.C. No CV-02-06568-CBM

MEMORANDUM*

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, Chief Judge, Presiding

Submitted on December 8, 2003**

Before: WALLACE, GOULD and CALLAHAN, Circuit Judges

03-56580

The court has received and reviewed the response to this court's order to show cause.

A review of the record and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, we summarily affirm the district court's orders.

All pending motions, including the emergency motion filed on September 11, 2003, are denied as moot.

AFFIRMED.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

[FILED JAN 9, 2012
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON,	No. 10-56068 D.C. No. 2:02-cv-06568-CBM-AJW
Plaintiffs - Appellants,	MEMORANDUM*
v.	
CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; et al.,	
Defendants - Appellees.	

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington appeal pro se from the district court's judgment dismissing their action arising out of foreclosure proceedings as barred by the doctrine of *res judicata*, and from the order denying their motion to set aside the judgment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a district court's denial of a Fed. R. Civ. P. 60(b) motion. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004). We review *de novo* a district court's determination regarding removal jurisdiction. *Providence Health Plan v. McDowell*, 385 F.3d 1168, 1171 (9th Cir. 2004). We may affirm on any ground supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief. *See Casey*, 362 F.3d at 1260 (discussing requirements of Rule 60(b)(3), including that the alleged fraud "not be discoverable by due diligence before or during the proceedings" (citation an internal

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

quotation marks omitted)); *see also Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1104 (9th Cir. 2006) (while "'fraud on the court' can sometimes constitute extraordinary circumstances meriting relief under Rule 60(b)(6)," such relief is construed narrowly).

The district court had removal jurisdiction because state claims filed to circumvent the *res judicata* impact of a federal judgment may be removed to federal court. *See Ultramar Am. Ltd. v. Dwelle*, 900 F.2d 1412, 1417 (9th Cir. 1990)

> When a litigant has suffered a final defeat on a federal claim yet thereafter files a similar-although-not-preempted state claim in state court, the sequence of events gives rise to an inference that the litigant is not interested in the state cause of action per se, but is instead attempting to circumvent the effects of the federal question judgment. In this limited instance, removal is allowed.

Plaintiffs' remaining contentions are unpersuasive.

Plaintiffs' motion for a preliminary injunction is denied. Plaintiffs' request for judicial notice is granted.

AFFIRMED.

[FILED APR 13 2012
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CRYSTAL MONIQUE LIGHTFOOT; BEVERLY ANN HOLLIS-ARRINGTON,

Plaintiffs - Appellants,

v.

CENDANT MORTGAGE CORPORATION, doing business as PHH Mortgage; et al.,

Defendants - Appellees.

No. 10-56068

D.C. No. 2:02-cv-06568-CBM-AJW
Central District of California, Los Angeles

ORDER

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

We hereby sua sponte withdraw the memorandum disposition filed on January 9, 2012.

Appellants' petition for panel rehearing and petition for rehearing en banc are denied as moot.

Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellants for purposes of this appeal only.

Pro bono counsel shall consult with appellants to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellants' previously filed briefs will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Appellees shall also file a replacement or supplemental brief, or shall notify the court in writing that appellees stand on the previously filed answering brief. Both parties shall state on the cover pages of the briefs whether they are replacement briefs or supplemental briefs.

The parties may file replacement excerpts or supplemental excerpts. If replacement excerpts are filed, the previously tendered excerpts will be

stricken. The absence of replacement excerpts will be treated as a joinder in the previously submitted excerpts.

In addition to any other issues the parties address in their briefs, they shall address whether the district court had subject matter jurisdiction on the basis of the federal charter of the Federal National Mortgage Association ("Fannie Mae"), 12 U.S.C. § 1723a(a).

Pro bono counsel shall appear at oral argument. The Clerk shall establish a supplemental/ replacement briefing schedule. The appeal is stayed pending further order of this court.

If appellants object to the court's appointment of counsel in this appeal, appellants shall file a written objection within 14 days after the date of this order.

JA 119

Case No. 10-56068

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BEVERLY HOLLIS-ARRINGTON & CRYSTAL LIGHTFOOT,

Plaintiffs-Appellants,

v.

CENDANT MORTGAGE CORPORATION et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Central District of California
Case No. 02-6568

DEFENDANT-APPELLEE FANNIE MAE'S RESPONSE BRIEF

JAN T. CHILTON
SEVERSON & WERSON
One Embarcadero Center
26th Floor
San Francisco, CA 94111
(415) 398-3344
(415) 956-0439 (fax)

JONATHAN D. HACKER
MICHAEL WALSH
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5285
(202) 383-5414 (fax)

Attorneys for Defendant-Appellee Fannie Mae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, defendant Federal National Mortgage Association states that it is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate which has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding stock.

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INTRODUCTION

This appeal arises from the third of five different lawsuits filed in federal and state courts around the country, all involving the same core set of facts and raising essentially the same allegations. In August 1999, plaintiff Beverly Hollis-Arrington took out a loan from Cendant Mortgage Corporation ("Cendant") secured by a deed of trust on property she owned in West Hills, California. The loan was subsequently sold to Federal National Mortgage Association ("Fannie Mae"). Hollis-Arrington missed her first payment on the loan in October 1999, and subsequently failed to make any payments at all. The property was eventually foreclosed and re-sold. In a series of lawsuits, Hollis-Arrington has alleged that this foreclosure was improper, either because Cendant, which remained the servicer on the loan, breached its agreement to grant her a forbearance or because the loan itself was part of an illegal conspiracy to encourage non-creditworthy African-Americans to take out loans that they would not be able to repay. All of Hollis-Arrington's other lawsuits have been dismissed. This one should be too.

Hollis-Arrington (along with her daughter) filed this action against Cendant, Fannie Mae, and Attorneys Equity (the trustee for the property) in California state court after a complaint raising essentially the same allegations was dismissed in California federal district court. Defendants removed to federal court, which dismissed the complaint on res judicata grounds and denied plaintiffs' Rule 60(b)

motion to set aside the judgment. This Court affirmed the district court's decisions in late 2003. Because the complaint was not dismissed as to Attorneys Equity, however, the case technically remained open, and in 2010, plaintiffs filed yet another Rule 60(b) motion and a new appeal to this Court. This Court initially affirmed, but then vacated its order, appointed counsel for plaintiffs, and directed that the parties file new briefs that, in addition to any other issues, addressed whether the case was properly removed to federal court.

Removal to federal court was plainly proper because Fannie Mae's federal charter provides that it can "sue or be sued ... in any court of competent jurisdiction, State or Federal." As the U.S. Supreme Court held in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), "sue or be sued" provisions that expressly mention the federal courts establish independent federal subject matter jurisdiction. That rule applies to cases involving Fannie Mae, as the D.C. Circuit held in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust v. Raines*, 534 F.3d 779 (D.C. Cir. 2008).

Plaintiffs' contrary argument is that the district court was not a "court of competent jurisdiction" as to their action against Fannie Mae, and thus the charter's "sue or be sued" provision did not confer federal jurisdiction over the action. In fact, the Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court *of competent jurisdiction*" suffice, without more, to authorize suit in federal district courts, and the phrase "of competent jurisdiction" in the Fannie Mae charter serves

multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae.

Having properly assumed jurisdiction, the district court also properly dismissed plaintiffs' claims on res judicata grounds because Hollis-Arrington had previously brought essentially the same suit, and that suit was dismissed on the merits. Indeed, this Court affirmed the district court's previous dismissal on res judicata grounds. The district court also properly exercised its discretion when it denied plaintiffs' Rule 60(b) motion to set aside the judgment. As an initial matter, plaintiffs' motion was untimely because they waited over *seven years* to file it. It also fails on the merits because all of the "newly discovered evidence" they cite was, in fact, not newly discovered at all—it was available and cited in the Rule 60(b) motion they previously filed in 2004—and it would not have changed the outcome in the case in any event.

The decisions of the district court should be affirmed.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction pursuant to 12 U.S.C. § 1723a(a), which provides that Fannie Mae may be "sued ... in any court of competent jurisdiction, State or Federal."

This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from a final judgment entered by the district court on June 11, 2010. Plaintiffs filed their notice of appeal on July 6, 2010.

STATEMENT OF THE ISSUES PRESENTED

1. Whether removal is proper where the defendant's federal charter authorizes it to "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal."

2. Whether this Court's prior order summarily affirming the district court's motion to dismiss and its denial of plaintiffs' Rule 60(b) motion is "law of the case."

3. Whether the district court properly dismissed plaintiffs' complaint on res judicata grounds, where one of the plaintiffs previously filed a suit raising the same claims against almost the exact same parties and it was dismissed on the merits.

4. Whether the district court properly exercised its discretion in denying plaintiffs' Rule 60(b) motion, where plaintiffs waited roughly seven years after their case was dismissed to file their motion and did not offer newly discovered evidence that was likely to have changed the outcome.

STATEMENT OF THE CASE

Plaintiff Beverly Hollis-Arrington was the owner of real property that was foreclosed upon and subsequently re-sold after she failed to make required loan payments. She has filed a number of suits in both federal and state court related to the foreclosure of the property. In this case, she and her daughter (to whom she at one point deeded her home) allege, among other things, that defendants conspired to make loans to

non-creditworthy African-Americans to induce default and allow Fannie Mae to foreclose on the property. Plaintiffs seek damages and declaratory relief.

A. Background on Fannie Mae

Originally established in 1938 in response to the Great Depression, Fannie Mae was created to fulfill an "important public mission," 12 U.S.C. § 4501(1), *viz.*, promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. National Housing Act Amendments of 1938, Pub. L. No. 75-424, 52 Stat. 8, 23 (1938); 12 U.S.C. §§ 1716-1719; *see* S. Rep. No. 102-282, at 9 (1992) (stating that Fannie Mae was "legislatively chartered for public purposes"). Because this mission was a critical component of federal housing policy, Fannie Mae was constituted as a governmental entity and organized under federal law. 12 U.S.C. § 1716. Its original charter provided that it could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934).

In 1954, with the enactment of the Housing Act of 1954, Fannie Mae was converted to a "mixed-ownership corporation," and the "sue-and-be-sued" provision in its charter was amended to provide that it could "sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal." Housing Act of 1954, Pub. L. No. 83-560, §

309(a), tit. II, 68 Stat. 590, 621-22 (1954). Notwithstanding these changes to its structure (and others that followed[1]), its fundamental purpose remained the same: to effectuate federal housing policy by making home ownership more accessible to low and middle-income Americans. *See* S. Rep. No. 102-282, at 25 (noting "the Congressional design in chartering the enterprises as privately owned and managed entities with special, public purposes"); *id.* at 34 (recognizing Fannie Mae's "special relationship with the federal government"); Corporate Governance, 70 Fed. Reg. 17,303, 17,309 (Apr. 6, 2005) (acknowledging Fannie Mae's "unique mission").

Because Fannie Mae is tasked with effectuating federal policies and achieving federal goals, Congress has ensured that Fannie Mae's structure and operations remain subject to federal oversight. When this case was removed to federal court, Fannie Mae was required, among other things, to submit annual reports to both houses of Congress and various federal agencies and offices. 12 U.S.C. § 1723a(d)(3)(A), 1723a(j), 1723a(m)(n). Fannie Mae was also required to meet annual housing goals established by the U.S. Secretary for Housing and Urban Development. *See* 12 U.S.C. §§ 4562-64. And Fannie

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[1] In 1968, Fannie Mae was established as a private shareholder owned corporation, Housing and Urban Development Act of 1968, Pub. L. No. 90-448, § 802(z)-(ee), 82 Stat. 476, 541 (1968), although it remained heavily regulated by the federal government, *see, e.g.*, Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941 (establishing the OFHEO as Fannie Mae's primary regulator).

Mae's prior regulator, the Office of Federal Housing Enterprise Oversight ("OFHEO"), enacted numerous federal regulations pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. No. 102-550, 106 Stat. 3941, covering a number of topics from executive compensation to Fannie Mae's capitalization, *see* 12 C.F.R. § 1770.1 (executive compensation); *id.* § 1777.1 (capitalization). Congress expanded the federal government's oversight of Fannie Mae when it passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654 (2008), which among other things, established the Federal Housing Finance Agency ("FHFA") as Fannie Mae's regulator and provided FHFA's Director with the authority to place Fannie Mae into conservatorship or receivership. 122 Stat. at 2662, 2734. FHFA's Director exercised that authority on September 6, 2008 and placed Fannie Mae into conservatorship. Since then, FHFA has enacted a number of regulations similar to those that were in place prior to the conservatorship. For example, Fannie Mae is still required to meet annual housing goals established by its conservator, FHFA. *See* 2012-2014 Enterprise Housing Goals, 77 Fed. Reg. 67,535 (2012). And FHFA is still required to submit annual reports to Congress regarding various aspects of Fannie Mae's business and performance. *See* 122 Stat. at 2745.

B. Factual Background

In August 1999, Cendant Mortgage Corporation ("Cendant") lent Hollis-Arrington $180,400 secured by a deed of trust on property she owned in

West Hills, California. Compl. ¶ 9.[2] Roughly a month later, Cendant sold the loan to Fannie Mae, although it remained the loan's servicer. *Id.* ¶ 10. Fannie Mae subsequently re-sold the loan to Cendant because it failed to meet Fannie Mae's credit standards.

In October 1999, the first monthly payment on the loan was due. Hollis-Arrington failed to make that payment, or any subsequent payment. *Id.* ¶ 12. She asked Cendant for, and was provided, information about programs to cure the default. Hollis-Arrington sought to enter into a forbearance agreement, and alleges that Cendant led her to believe that a forbearance agreement had been approved. *Id.* ¶ 15. Cendant ultimately rejected the application and initiated foreclosure proceedings.

In May 2000, to prevent foreclosure, Hollis-Arrington filed a bankruptcy petition. That petition was dismissed the next month for failure to pay the required filing fees. *See* DE 31-33, No. 00-bk-14478-GM (Bankr. C.D. Cal. 2000). In July 2000, she filed a second bankruptcy petition, which was again dismissed for failing to pay the required filing fees. This time, the court's dismissal order barred Hollis-Arrington from filing another bankruptcy petition for 180 days. *See* DE 27, 28, No. 00-bk-16423-GM (Bankr. C.D. Cal.).

On September 11, 2000, Hollis-Arrington deeded her home to her daughter, Crystal Lightfoot.

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[2] All citations to "Compl." or "DE" (without a corresponding case number) refer to the underlying action giving rise to this appeal.

See Compl. Ex. E, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Lightfoot filed her own bankruptcy petition. This petition too was dismissed for failure to make the required payments, and the court barred Lightfoot from filing another bankruptcy petition for 180 days. DE 28, 29, No. 00-bk-18360-AG (Bankr. C.D. Cal. 2000).

Cendant scheduled a new foreclosure sale on November 28, 2000, but continued the sale to January 11, 2001, based on Hollis-Arrington's assurance that she was trying to refinance. Although no refinancing ever occurred, the foreclosure was further delayed by court order in the first lawsuit Hollis-Arrington filed in federal district court in October 2000. *See* DE 25, No. 00-cv-11125-CBM-AJW (C.D. Cal. Jan. 10, 2001); *see also infra* at 10-11. On February 5, 2001, four days after the district court lifted the temporary stay it had granted (DE 44, No. 00-cv-11125-CBM-AJW (C.D. Cal. Feb. 1, 2001), Lightfoot filed a second bankruptcy case, which was dismissed the next month. Lightfoot was again barred from making a new bankruptcy filing for 180 days. DE 30, 31, No. 01-bk-10910-AG (Bankr. C.D. Cal. 2001).

Lightfoot then transferred 50% of the property back to Hollis-Arrington (Compl. ¶ 102, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003)), who filed her third bankruptcy petition on March 22, 2001. Cendant at that point obtained "in rem" relief from the automatic stay in order to proceed with foreclosure, which was scheduled for June 29, 2001. DE 33, No. 01-12579-GM (Bankr. C.D. Cal.). Despite Hollis-Arrington's attempt to seek a stay in her second suit in

federal district court, the foreclosure sale was finally held that day. Compl. ¶¶ 61-72, No. 03-cv-02416-TPJ (D.D.C. Nov. 21, 2003). Harold Tennen and Ed Feldman bought the property at the sale and, through state court action, evicted Hollis-Arrington in September 2001. *Id.* ¶¶ 80-81. They subsequently sold the property to Robert O. Matthews. Compl. ¶ 5.

C. Related Actions

This appeal arises from the third of at least five suits filed by plaintiffs in connection with the foreclosure of the property. In the first suit, which Hollis-Arrington filed against Cendant in the Central District of California on October 18, 2000, she alleged that Cendant had "fraudulently promised to provide her with a forbearance agreement after she fell delinquent but reneged and foreclosed on the property instead." *Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *2 (D.N.J. Nov. 15, 2005). The district court granted Cendant's motion for summary judgment, DE 102, No. 00-cv-11125-CBM-AJW (C.D. Cal. July 15, 2002), and this Court affirmed, *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 462 (9th Cir. 2003) (mem).

In June 2001, while the first case was pending, Hollis-Arrington filed a second action against Cendant, Fannie Mae, and Attorneys Equity National Corporation. This time, her theory was that "Cendant, in a conspiracy with Fannie Mae, sought to make mortgage loans to non-creditworthy black borrowers for the sole purpose of causing the borrowers to default on the loans and enabling Fannie Mae to

foreclose and acquire the real property." DE 162, at 3, No. 01-cv-05658 (C.D. Cal. Aug. 29, 2003). In May 2002, the district court dismissed the case, DE 131, at 7, No. 01-cv-05658 (C.D. Cal. May 28, 2002), and this Court affirmed. *PHH Mortg. Corp.*, 2005 WL 3077853, at *2; *see* DE 28, No. 02-56280 (9th Cir. Apr. 17, 2003).

After the district court dismissed Hollis-Arrington's complaint in the second suit, she (along with her daughter, Crystal Lightfoot) filed this case in Los Angeles Superior Court on July 18, 2002. They sued the same parties as in the second action and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. *Id.* at 3; *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The district court granted motions by Cendant and Fannie Mae to dismiss on res judicata grounds, and this Court affirmed. *See infra* at 12-16 (detailing the full procedural history of this litigation).

Hollis-Arrington subsequently filed a fourth action in federal court in the District of Columbia. *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 50 (3d Cir. 2006) (per curiam) (discussing No. 03-cv-02416-TPJ (D.D.C. 2003)). The district court granted defendants' motion to dismiss on res judicata grounds, DE 41, No. 03-cv-02416-TPJ (D.D.C. Feb. 17, 2004), and the D.C. Circuit Court of Appeals affirmed, Order, *Hollis-Arrington v. Fannie Mae*, No. 04-5068, at 2 (D.C. Cir. Nov. 15, 2004).

Finally, plaintiffs filed a fifth suit in federal court in New Jersey. *PHH Mortg. Corp.*, 2005 WL 3077853, at *3. The defendants moved to dismiss on a

variety of grounds, including res judicata, and the district court granted the motion. *Id.* at *5-12. The Third Circuit Court of Appeals affirmed. *PHH Mortg. Corp.*, 205 F. App'x at 55; *see id.* at 52 ("res judicata bars suit against ... Fannie Mae").

D. Proceedings Below

As noted above, plaintiffs filed this case in Los Angeles Superior Court after the similar complaint Hollis-Arrington had previously filed in federal district court was dismissed. On August 22, 2002, Fannie Mae removed the case to federal district court. On August 26, 2002, plaintiffs filed an application to remand, which was denied on September 5, 2002.

In late August, while the remand briefing was ongoing, defendants Fannie Mae, Cendant, and Matthews filed motions to dismiss. On February 20, 2003, the district court granted Cendant's and Fannie Mae's motion to dismiss, concluding that all three elements of res judicata were satisfied. First, "[p]laintiffs have already prosecuted two prior actions concerning the same loan process and eventual foreclosure of their property....Thus, the same rights and interests are at issue in the instant case as were adjudicated in the previous actions." OER 1:33 (DE 59, at 8).[3] Second,

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[3] Citations to "OER" refer to the Excerpts of Record filed with plaintiffs' original brief. Because the Excerpts of Record are not consecutively paginated, the cited page number refers to the page in the PDF version of the Excerpts of Record. Thus, the citation "OER 1:33" refers to page 33 of the PDF of the first volume of the Excerpts of Record. The citation to the relevant docket entry is included in parentheses, as well.

"the requirement that the earlier actions result in a final judgment on the merits is met" because "[u]nder federal law, final judgments have preclusive effect under res judicata regardless of the pendency of appeal." *Id.* at 34 (DE 59, at 9). Third, the parties were so similar that their interests were adequately represented in the original suit. *Id.* at 34-35 (DE 59, at 10). The court also granted defendants' motion on the alternative ground that plaintiffs' claims were barred by collateral estoppel.

On June 4, 2003, plaintiffs filed a motion to set aside the judgment as to all defendants other than Attorneys Equity, and on August 29, 2003, the district court denied the motion. *Id.* at 46 (DE 79, at 1). Although judgment had not been entered against Attorneys Equity, plaintiffs filed a notice of appeal, and on December 15, 2003, this Court summarily affirmed. SER-7-8;[4] *see* OER 1:56 (DE 89). This case was removed from the district court's active docket and remained dormant until late 2008.

On April 7, 2009, plaintiffs filed a motion in the district court to restore this case to the court's active calendar for the purpose of entering final judgment pursuant to Federal Rule of Civil Procedure 54(b). On October 21, 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews, "consistent with" its prior order granting the defendants' motions to dismiss. On May 27, 2010, the district court ordered plaintiffs to show cause no later than

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[4] Citations to "SER" refer to the Supplemental Excerpts of Record.

June 10, 2010 why the action should not be dismissed with prejudice as to Attorneys Equity based on the doctrine of res judicata. On June 11, 2010, the court sua sponte dismissed the claim against Attorneys Equity on res judicata grounds, and entered judgment in favor of Attorneys Equity. Plaintiffs ultimately filed a reply to the court's show cause order later that day.

That same day, plaintiffs moved to set aside the judgment pursuant to Rule 60(b). On September 27, 2010, the district court denied plaintiffs' motion to set aside the judgment. The district court first held that it lacked jurisdiction over the motion because plaintiffs failed to file it within a year after entry of judgment. The court held that "[a]lthough [it] did not initially enter a judgment on a separate document as required by Federal Rule of Civil Procedure 58(a), Plaintiffs demonstrated their belief that the February 20, 2003 order was a final judgment." OER 1:93 (DE 117, at 7). "Because the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal." *Id.*

The court also rejected plaintiffs' motion on the merits, explaining that "[p]laintiffs have failed to present clear and convincing evidence that Defendants' attorneys perpetrated fraud upon the Court, that the judgment was unfairly procured, or that the evidence was not previously available to Plaintiffs. Indeed, the evidence was clearly discoverable prior to the filing of

the Rule 60(b) Motion because the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." *Id.* at 94 (DE 117, at 8). The court also rejected plaintiffs' request for "'an independent action for the court to set aside the judgment for "fraud upon the court."'" *Id.* at 95 (DE 117, at 9). Construing the request as one for relief under Rule 60(b)(6), the court held that there was "no basis for this extraordinary relief." *Id.* On September 30, 2010, this Court lifted the stay on the appeal.

Following briefing, this Court issued a memorandum, holding that "[t]he district court did not abuse its discretion by denying plaintiffs' Rule 60(b) motion to set aside the judgment because plaintiffs failed to establish any ground for relief." DE 30, at 2, No. 10-56068 (9th Cir. Jan. 9, 2012). This Court also held that "[t]he district court had removal jurisdiction because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Id.*

On January 20, 2012, plaintiffs petitioned for panel rehearing and rehearing en banc. On April 13, 2012, this Court sua sponte withdrew the memorandum disposition filed on January 9, 2012 and denied as moot plaintiffs' petition for rehearing and rehearing en banc. The Court appointed pro bono counsel for plaintiffs and directed pro bono counsel to file either replacement or supplemental briefing; the Court also provided that defendants could file replacement or supplemental briefs. The Court directed that "[i]n addition to any other issues the parties address in their briefs, they shall address whether the district court

had subject matter jurisdiction on the basis of the federal charter of [Fannie Mae]." DE 32, at 2, No. 10-56068 (9th Cir. Apr. 13, 2012).

SUMMARY OF ARGUMENT

I. The district court properly held that the "sue and be sued" provision in Fannie Mae's charter confers federal subject matter jurisdiction. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), the Supreme Court held that where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. That rule plainly applies here. The only difference between Fannie Mae's charter and the one at issue in *American National Red Cross* is that Fannie Mae's charter authorizes suit in "any court of *competent jurisdiction*, state or federal." That is a distinction without a difference. The Supreme Court has held that similar statutory provisions authorize suit in federal district courts, and that phrase in Fannie Mae's charter serves multiple functions having nothing to do with the scope of federal jurisdiction over suits by and against Fannie Mae, as the history of Fannie Mae's charter confirms.

II. This Court should affirm because its prior order summarily affirming the district court's decisions in this case is "law of the case." This Court's prior order necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and none of the "new" evidence plaintiffs offered in their Rule 60(b) motion merited a change in

result. Those are the precise questions at issue in this appeal.

III. The district court properly held that plaintiffs' claims were barred on res judicata grounds because all three criteria are satisfied here: (1) identity of claims, (2) final judgment on the merits, and (3) identity or privity between the parties. Hollis-Arrington previously brought these same claims in a prior action, which was dismissed on the merits. And the only new party is Hollis-Arrington's daughter, who temporarily owned the property at issue and has precisely the same interests in the litigation as her mother.

IV. The district court did not abuse its discretion in denying plaintiffs' Rule 60(b) motion. To start, plaintiffs' request was untimely. A Rule 60(b) motion must be brought within a "reasonable time," and plaintiffs waited seven years to bring their motion. It was also without merit because the evidence they offered was not new and, in any event, would not have changed the outcome in this case.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's denial of a motion to remand for lack of removal jurisdiction. *See Infuturia Global Ltd. v. Sequus Pharm., Inc.*, 631 F.3d 1133, 1137 (9th Cir. 2011). This Court also reviews *de novo* the district court's dismissal based on res judicata. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002).

This Court reviews for abuse of discretion a district court's denial of a Rule 60(b) motion. *See SEC v. Worthen*, 98 F.3d 480, 482 (9th Cir. 1996). This Court "may not reverse a district court's exercise of its discretion unless [it has] a definite and firm conviction that the district court committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors." *SEC v. Coldicutt*, 258 F.3d 939, 941 (9th Cir. 2001). "A district court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." *Id.*

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THAT THE "SUE AND BE SUED" PROVISION IN FANNIE MAE'S CHARTER CONFERS FEDERAL SUBJECT MATTER JURISDICTION

A. The Supreme Court's Decision In *American National Red Cross* Requires Federal Jurisdiction In This Case

1. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), the Supreme Court recognized the long-standing rule that governs this case: where a "sue and be sued" provision in a federal charter explicitly mentions federal courts, that provision establishes independent subject matter jurisdiction in the federal courts. Applying that rule, the D.C. Circuit Court of Appeals held that the exact charter provision at issue here—the provision authorizing Fannie Mae

"to sue and be sued, and to complain and defend, in any court of competent jurisdiction, State or Federal"—confers federal subject matter jurisdiction, thus making removal appropriate. *Pirelli*, 534 F.3d at 784. The same result should follow here.

American National Red Cross involved a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision "confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* The Supreme Court noted that it did "not face a clean slate" in considering the question. *Id.* at 252. Rather, since the Republic's early days, the Court had on "several occasions ... consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And the critical question in those early cases, the Court emphasized, was whether the "sue and be sued" provision specifically mentioned the federal courts; where it did, the Court held that the provision conferred federal subject matter jurisdiction. *Id.*

The first case in this line was *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61 (1809), which held that a provision authorizing the first Bank of the

United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal court jurisdiction. This generally stated power to sue and be sued, the Court explained, "is conferred by every incorporating act, and is not understood to enlarge the jurisdiction of any particular court." *Id.* at 85-86. By way of contrast, the Court pointed to a different provision, which subjected the president and directors in their individual capacity to suit and "expressly authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn v. President, Directors & Co. of Bank*, 22 U.S. (9 Wheat.) 738 (1824), the Court highlighted the same distinction in considering the charter of the second Bank of the United States. The second Bank was authorized to "sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." *Id.* at 817 (emphasis added). By its reference to suit "'in every Circuit Court of the United States,'" the provision "confer[red] jurisdiction on the Circuit Courts of the United States." *Id.* at 818. Reiterating the contrast drawn in *Deveaux*, the Court observed that the first Bank's charter provision, which merely created "a general capacity in the Bank to sue, without mentioning the Courts of the Union," did not suffice to "give a right to sue in those Courts." *Id.*

Deveaux and *Osborn* together establish "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Am. Nat'l Red Cross*, 505 U.S. at 255 (emphasis added); *see id.* at 257 ("The rule established in these cases makes it clear that the Red Cross Charter's 'sue and be sued' provision should be read to confer jurisdiction."). Under this "basic rule," the Court explained in *American National Red Cross*, a provision that "authoriz[es] the organization to sue and be sued in federal courts" is a provision that "extends beyond a mere grant of general corporate capacity to sue," and for that reason "suffices to confer federal jurisdiction." *Id.* at 257.

2. Plaintiffs make two arguments that *American National Red Cross* does not compel the same result here. Neither has merit.

First, they argue that *American National Red Cross* merely permits, but does not mandate, that Fannie Mae be allowed to remove where the charter provision explicitly references federal courts. They point specifically to "*Red Cross*'s use of the word 'may,'" which they argue "is generally 'employed to imply permissive, optional or discretional, and not mandatory action.'" Pls. Br. 20 (quoting *Pirelli*, 534 F.3d at 796). But elsewhere in the opinion, *American National Red Cross* makes clear that express reference to the federal courts in a "sue and be sued" provision mandates that the federal entity be permitted to remove: "The rule established in these cases makes it clear that the Red Cross Charter's 'sue and

be sued provision' *should be read* to confer jurisdiction." 505 U.S. at 257 (emphasis added); *cf.* Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6 ("This Court's decisions have established *a clear rule* that congressional charters provide for original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts." (emphasis added)). As the Court explained, it was important to respect this rule because Congress relied on it in enacting charters for federal entities like the Red Cross. *See Am. Nat'l Red Cross*, 505 U.S. at 264 ("We would be loath to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely ...."); *see also Bankers Trust Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 304 (1916) (holding that a provision authorizing the Texas and Pacific Railway Company to "sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States" did not confer federal subject matter jurisdiction because "[i]t was in the light of [the differing precedents in the first and second Bank charters] and of the resulting difference in their interpretation that Congress framed the act [chartering the railway company]").

Second, plaintiffs argue that Fannie Mae's charter provision differs meaningfully because of its reference to suit in "any court *of competent jurisdiction*." Pls. Br. 20 (emphasis added). According to plaintiffs, the phrase "of competent jurisdiction" effectively drains the explicit reference to "federal" courts of the import ascribed to such references in *Osborn*

and *American National Red Cross*, because it must be read to permit suit in federal court only if the court *otherwise* has "competent" subject-matter jurisdiction.

Plaintiffs grossly overread the phrase. The Supreme Court has previously held that statutory provisions authorizing suit in "any Federal or State court of competent jurisdiction" suffice, without more, to authorize suit in federal district courts. In *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003), for example, the Court held that an individual could sue his former employer in federal court for violations of the Fair Labor Standards Act because the statute provided that suit under the Act "'may be maintained ... in any Federal or State court of competent jurisdiction.'" *Id.* at 694; *see Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73-74 (2000). And as the D.C. Circuit explained in *Pirelli*, the phrase "of competent jurisdiction" in the Fannie Mae charter, in particular, serves multiple functions that have nothing to do with restricting the scope of federal jurisdiction over suits by and against Fannie Mae. *Pirelli*, 534 F.3d at 785.

To start, the phrase "help[s] clarify that ... litigants in state courts of limited jurisdiction must satisfy the appropriate jurisdictional requirements." *Id.* at 785; *see Osborn*, 22 U.S. at 817 (addressing statute that conferred authority on the Bank of the United States to "sue and be sued ... in all State Courts having competent jurisdiction"). It also makes clear that "litigants, whether in federal or state court, must establish that court's *personal* jurisdiction over the parties." *Pirelli*, 534 F.3d at 785 (emphasis

added). Indeed, the term "competent jurisdiction" is commonly used in law to refer to personal jurisdiction. *See, e.g.*, *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952) ("If the Commission's action is reviewable under § 1009, it is reviewable only in a court of 'competent jurisdiction.' ... [I]t must follow that review must be in that district where the Commissioners can be served." (internal footnote omitted)); *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1178-79 (9th Cir. 2004) ("the question of a federal court's competence to exercise personal jurisdiction over a defendant is distinct from the question of whether venue is proper"); *SunCoke Energy Inc. v. MAN Ferrostaal Aktiengesellschaft*, 563 F.3d 211, 213 (6th Cir. 2009) ("the parties have treated the contract forum-selection clause for equitable relief—calling for adjudication in 'any court of competent jurisdiction'—to mean any court with personal jurisdiction"); *Drake v. Whaley*, 355 F. App'x 315, 317 (11th Cir. 2009) ("because it lacked personal jurisdiction over the Defendants, the District Court for the Eastern District of New York was not a competent court of jurisdiction").[5] The phrase also establishes that "litigants relying on the 'sue-and-be-sued' provision can

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[5] Plaintiffs thus err in arguing—following Judge Brown's concurrence in *Pirelli*—that "the phrase competent jurisdiction' almost always refers to subject-matter jurisdiction." Pls. Br. 12 (citing *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 316 (2006), and *United States v. Morton*, 467 U.S. 822, 828 (1984)); *see Pirelli*, 534 F.3d at 797 (Brown, J., concurring) (citing *Morton*, 467 U.S. at 828, for the proposition that "'[a]s far back as *Pennoyer v. Neff*, ..., [courts] drew a clear distinction between a court's "competence" and its jurisdiction over the parties'"). Not only is the argument contrary to the cases cited in text, it is also unsupported by the cases cited by plaintiffs. In *Wachovia Bank*,

sue in federal district courts but not necessarily in all federal courts." *Pirelli*, 534 F.3d at 785. Thus, a litigant may not appear in a federal court that otherwise imposes additional jurisdictional requirements, such as the Court of International Trade or the Court of Claims. *Cf. Am. Nat'l Red Cross*, 505 U.S. at 267 (Scalia, J., dissenting) (explaining that under the majority's view Red Cross "could appear ... as a party in a third-party action in the Court of International Trade and in an action before the United States Claims Court" because it "is clearly granted the *capacity* to sue and be sued in *all* federal courts" (internal citations omitted)). With respect to the Court of Claims, in particular, the "of competent jurisdiction" language also ensures that claims exceeding $10,000 are not *required* to be heard in the Court of Claims. *Compare S. Windsor Convalescent Home, Inc. v. Mathews*, 541 F.2d 910, 914 (2d Cir. 1976) ("Since the claim involved in this case is directed against the United States, seeks solely a money judgment, and exceeds the threshold sum of $10,000, jurisdiction lies exclusively with the Court of Claims."), with *Ferguson v. Union Nat'l Bank*, 126 F.2d 753, 756 (4th Cir. 1942) (interpreting a "sue-and-

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for example, the Court simply noted that "[s]ubject-matter jurisdiction ... concerns a court's competence to adjudicate a particular category of cases." 546 U.S. at 316. And, in *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Court merely stated that "there must be a tribunal competent by its constitution ... to pass upon the subject-matter of the suit." *Id.* at 733. In fact, in *Morton*, although the Court recognized that "competent jurisdiction," "usually ... refer[s] to subject-matter jurisdiction," the Court noted that it "has also been used on occasion to refer to a court's jurisdiction over the defendant's person." 467 U.S. at 828.

be-sued" provision with the "of competent jurisdiction" language and concluding that "[i]t could hardly have been intended by Congress that suits for over $10,000 against the Administrator could be brought in any state court of general jurisdiction, but in the federal jurisdiction only in the Court of Claims"); *Portsmouth Redevelopment & Hous. Auth. v. Pierce*, 706 F.2d 471, 475 (4th Cir. 1983) (reaffirming *Ferguson*).[6]

Moreover, when the Supreme Court decided *American National Red Cross*, it was well aware that its decision would have implications for other "sue and be sued" provisions like Fannie Mae's. In its brief, the Red Cross noted that "entities besides the Red Cross will be affected by this Court's choice among the proposed modes of analysis" and cited provisions containing the "of competent jurisdiction" language. Br. for Pet'r, *Am. Nat'l Red Cross v. S.G.*, 1992 U.S. S. Ct.

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[6] Indeed, this explanation makes sense of the difference between Fannie Mae's charter and that of its sibling, Freddie Mac, which omits the "of competent jurisdiction" language. In her concurrence in *Pirelli*, Judge Brown argued that this difference supported her view that that the language was added to Fannie Mae's charter to remove federal subject matter jurisdiction. 534 F.3d at 799 (Brown, J., concurring). But concerns that claims involving Fannie Mae might otherwise have been forced into the Court of Claims explains this difference: Freddie Mac was "originally created as a private entity" and thus "Congress likely would not have been concerned that, absent the 'of competent jurisdiction' language, Freddie Mac cases could be funneled only to the Court of Claims rather than to federal district courts, which was a potential concern in 1954 when Congress revised the Fannie Mae statute for that then-governmental entity." *Id.* at 787 n.4.

Briefs LEXIS 220, at *48. Specifically, it noted that the Solicitor General had "advised [the Supreme] Court" that similar language in another federal charter conferred federal subject matter jurisdiction: 'Plainly, Section 1702 [of the National Housing Act], by authorizing suit "in any court of competent jurisdiction, State or Federal," provides a basis for district court jurisdiction ...'" *Id.*

There is, in sum, no legally meaningful distinction between the "sue or be sued" provision in *American National Red Cross* and the provision at issue here. What matters is that both make an express reference to suits in federal court. Under the longstanding rule running from *Deveaux* and *Osborn* through to *American National Red Cross* and *Pirelli*, that reference suffices to establish federal jurisdiction, and hence authorize removal.

B. The History Of Fannie Mae's Charter Makes Clear That Congress Intended To Authorize Federal Subject Matter Jurisdiction Over Claims Against Fannie Mae

The history of the Fannie Mae charter provision confirms Congress's intent, already expressed in its plain language, to create federal subject matter jurisdiction over suits by and against Fannie Mae.

Under the original 1934 statute, Fannie Mae was a governmental entity tasked with effectuating important federal policies, and Congress thus wanted to ensure it would have access to the federal courts. Toward that end, Congress provided that Fannie Mae

could "sue and be sued, complain and defend, in any court of law or equity, State or Federal." Pub. L. No. 73-479, § 301(c)(3), 48 Stat. 1246, 1253 (1934). As discussed above, Congress at that time would have understood this language to unambiguously confer federal subject matter jurisdiction. *See supra* at 1922.

Twenty years later, with the enactment of the Housing Act of 1954, Congress revamped the original statute. Among other things, Congress added the phrase "of competent jurisdiction" to the sue-and-be-sued clause. Pub. L. No. 83-560, tit. II, 68 Stat. 590, 612-22 (1954). The theory, then, is that Congress sought by this amendment to revoke the federal court jurisdiction that previously existed. Yet there is no indication that Congress was troubled by the scope of existing jurisdiction, and there is no reason to think that it would have been. Indeed, although Fannie Mae was converted to a "mixed-ownership corporation" at that time, it continued to enjoy a special relationship with the federal government, and its fundamental objective remained to fulfill federal policy goals. More significant, even if Congress were troubled by the scope of existing jurisdiction, there is no reason Congress would have understood the language it added to have restricted that jurisdiction. To the contrary, when Congress acted in 1954, courts of appeals had recently examined "sue-and-be-sued" provisions with the exact same "of competent jurisdiction" language and concluded that they conferred federal subject matter jurisdiction. *See Seven Oaks, Inc. v. Fed. Hous. Admin.*, 171 F.2d 947, 948 (4th Cir. 1948) ("[The statute] provides not only that the agency may be sued but also in what courts suit may be instituted. The

exact language of the statute is: 'The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.' There is no more ambiguity in the language used and no more reason to restrict its meaning than there was the meaning of the language permitting suit in any United States District Court in the Railway Labor Act." (internal citation omitted)); *Ferguson v. Union Nat'l Bank*, 126 F.2d at 756-57 ("We think there can be no question but that the court had jurisdiction of the cause. It is specifically provided that the Administrator in his official capacity may 'sue and be sued in any court of competent jurisdiction, State or Federal.'"); *see also George H. Evans & Co. v. United States*, 169 F.2d 500, 502 (3d Cir. 1948). Plaintiffs cite no court that had so much as suggested otherwise.

As the D.C. Circuit pointed out in *Pirelli*, it would have made no sense for Congress in 1954 to "negate automatic federal jurisdiction" by such an indirect device as the phrase "of competent jurisdiction." 534 F.3d at 786. "If Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Id.* Indeed, Congress did exactly that in the same year it added the "of competent jurisdiction" language to Fannie Mae's charter, deleting the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC") statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633

(1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

C. The Cases Cited By Plaintiffs Do Not Defeat Federal Jurisdiction In This Case

In the face of *American National Red Cross* and *Pirelli*, plaintiffs rely on cases addressing the "of competent jurisdiction" language in vastly different contexts. Their principal authority is *Califano v. Sanders*, 430 U.S. 99 (1977), which has no application here. In *Califano*, the Court considered whether § 10 of the APA granted the federal courts jurisdiction to consider challenges to agency action. Section 10 of the APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof," and that "[t]he form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action ... in a court of competent jurisdiction." 5 U.S.C. §§ 702, 703.

The Court in *Califano* concluded that § 10 did not confer automatic federal subject matter jurisdiction, but there are obvious differences between this case and *Califano*. First, the phrase there did *not expressly refer to federal courts*. Under the *Deveaux-Osborn-Red Cross* rule, the provision would not create federal jurisdiction. But where, as here, the language does refer to federal courts, federal jurisdiction is established.

Second, as the *Califano* Court explained, the phrase "of competent jurisdiction" in APA § 10 is used in a provision that is not about creating judicial jurisdiction at all: "[E]ven the advocates of jurisdiction under the APA acknowledge that there is no basis for concluding that Congress, in enacting § 10 of the APA, actually conceived of the Act in jurisdictional terms." *Califano*, 430 U.S. at 106. The context of the provision "suggests that this language was not intended as an independent jurisdictional foundation, since such judicial review is to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction.' Both of these clauses seem to look to outside sources of jurisdictional authority." *Id.* at 106 n.6. Here, by contrast, "sue or be sued" provisions like the Fannie Mae charter provision have long been construed as creating independent federal court jurisdiction. In other words, in *Califano*, the "of competent jurisdiction" language was attached to a statutory provision that was not intended to confer jurisdiction of any kind; here, it is.

Third, *Califano* did not involve a federally-charted corporation, like Fannie Mae. As this Court

has already recognized, "[t]he Court's holding in *Red Cross* applies specifically to 'sue and be sued' provisions in charters for federally-chartered corporations." *K V. Mart Co. v. United Food & Commercial Workers Int'l Union*, 173 F.3d 1221, 1224 (9th Cir. 1999) (per curiam). "Federally-chartered corporations ... are entirely defined by federal law," *id.* at 1225, and it is thus especially important that they be able to access the federal courts.

Plaintiffs err equally in relying on *Doe v. Mann*, 415 F.3d 1038 (9th Cir. 2005). The provision in that case stated that "[a]ny Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian for whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action." 25 U.S.C. § 1914. Relying heavily on *Califano*, this Court held that "§ 1914's reference to 'any court of competent jurisdiction' *alone* does not create subject-matter jurisdiction in the federal district court." *Doe*, 415 F.3d at 1045 (emphasis added). That is precisely the point: if Fannie Mae's charter provision merely authorized suit in "any court of competent jurisdiction," that reference "alone" would not suffice to create federal subject-matter jurisdiction under the *Deveaux-Osborn-Red Cross* rule. But Fannie Mae's charter provision goes farther, specifically authorizing suit in federal courts, which does suffice under

that rule. *Doe* says nothing at all about that kind of provision.[7]

Finally, plaintiffs rely on a series of district court cases that have addressed Fannie Mae's charter and similar language in the charter of the Federal Home Loan Bank. Pls. Br. 16-18. The analysis in these cases is simply unpersuasive. *Rincon del Sol v. Lloyd's of London*, 709 F. Supp. 2d 517 (S.D. Tex. 2010), and *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559 (S.D. W. Va. 2007), for example, both rely principally on the argument that interpreting the "sue and be sued" provision to confer independent federal subject matter jurisdiction would render the "of competent jurisdiction" language superfluous. *Rincon*, 709 F. Supp. 2d at 524; *Knuckles*, 481 F. Supp. 2d at 563. But, as explained above, interpreting Fannie Mae's charter to confer federal subject matter jurisdiction does not render the "of competent jurisdiction" language superfluous at all. *See supra* at 24-27.

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[7] Plaintiffs also mention in passing older cases in which courts of appeals had held that 12 U.S.C. § 1702, which authorizes the Secretary of Housing & Urban Development "to sue and be sued in any court of competent jurisdiction, State or Federal," does not confer federal subject matter jurisdiction. *See* Pls. Br. 17 (citing *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980)); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978); *Lindy v. Lynn*, 501 F.2d 1367, 1369 (3d Cir. 1974)). Those cases all pre-date *American National Red Cross*, however, and do not even acknowledge the long line of earlier Supreme Court cases holding that "sue-and-be-sued" provisions that reference federal courts generally provide federal subject-matter jurisdiction.

These courts also took the curious position that Congress's decision "to use substantially different language" in amending Fannie Mae's charter seven years after adopting the Red Cross charter indicated that Congress intended different federal jurisdictional consequences. *Rincon*, 709 F. Supp. 2d at 525. But as explained, the language Congress used in the Fannie Mae amendment was not "substantially different" in any meaningful sense; it was instead identical to provisions federal appellate courts had recently construed as conferring federal subject matter jurisdiction. *See supra* at 29-30. As noted, if Congress had actually intended to restrict the jurisdiction already conferred by Fannie Mae's original "sue and be sued" provision, the "substantially different language" to use would have been to delete the reference to "State or federal" courts, thereby easily eliminating automatic federal subject matter jurisdiction under already-existing Supreme Court precedent. Trying to achieve that result by retaining the express reference to federal courts while adding the "of competent jurisdiction" phrase would be a ridiculous "bank shot" with exactly no support in precedent existing at the time. *Pirelli*, 534 F.3d at 786. The other district court cases on which plaintiffs rely (Pl. Br. 17-19) all involve the same flawed reasoning.

The text, history, and sound judicial constructions of the Fannie Mae charter provision all make clear that it creates federal jurisdiction over this action and therefore supports its removal.

II. THIS COURT SHOULD AFFIRM BECAUSE ITS PRIOR ORDER SUMMARILY AFFIRMING THE DISTRICT COURT'S DECISIONS IN THIS CASE IS "LAW OF THE CASE"

In this appeal, plaintiffs ask this Court to review the district court's order dismissing their claims and denying their Rule 60(b) motion. Plaintiffs have previously asked this Court to review orders resolving the exact same issues, and this Court has already rejected plaintiffs' arguments on the merits. This Court's prior order is "law of the case," and there is no reason for this Court to disturb its ruling now.

The "law of the case doctrine" is designed "to promote the efficient operation of the courts." *Hall v. City of L.A.*, 697 F.3d 1059, 1067 (9th Cir. 2012). "It generally precludes a court from reconsidering an issue decided previously [either explicitly or by necessary implication] by the same court or by a higher court in the identical case." *Id.* Thus, under the "law of the case" doctrine, "one panel of an appellate court will not as a general rule reconsider questions which another panel has decided on a prior appeal in the same case.'" *Hegler v. Borg*, 50 F.3d 1472, 1475 (9th Cir. 1995) (quoting *Merritt v. Mackey*, 932 F.2d 1317, 1320 (9th Cir. 1991)). Although the doctrine is discretionary, this Court has observed that "a prior decision should be followed unless (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3)

substantially different evidence was adduced at a subsequent trial." *Id.*

Law of the case doctrine plainly applies here. In 2003, plaintiffs appealed the district court's orders dismissing their claims against Cendant, Fannie Mae, and Mathews on res judicata grounds and denying their first Rule 60(b) motion. This Court "summarily affirm[ed] the district court's orders," concluding that "[a] review of the record and appellant's response indicates that the questions raised in this appeal are so insubstantial as not to require further argument." SER-8. Although this Court did not discuss the reasons for its decision, it necessarily held that the district court properly dismissed plaintiffs' claims on res judicata grounds, and that none of the "new" evidence in plaintiffs' Rule 60(b) motion (which they repeat here) merited a change in the result. These are the precise questions at issue in this appeal, and there is no reason for this Court to answer them differently now than it did nearly a decade ago.

III. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' CLAIMS ON RES JUDICATA GROUNDS

This Court's prior order is not just law of the case, it is legally correct: plaintiffs' claims are barred by res judicata. Just as plaintiffs now seek to re-litigate issues previously litigated and decided, this entire suit was simply an attempt to re-litigate in state court claims that had already been litigated and rejected in federal court.

Res judicata "'bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action.'" *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (quoting *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997)). "The doctrine is applicable whenever there is '(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties.'" *Id.* As the district court held, all three criteria are satisfied here.

First, to determine whether there is an "identity of claims," this Court considers four factors: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." *Turtle Island Restoration Network v. U.S. Dep't of State*, 673

F.3d 914, 917-18 (9th Cir. 2012). The "'most important'" of these factors is the fourth, *id.* at 918, and the inquiry is "essentially the same as whether the claim could have been brought in the first action." *United States v. Liquidators of European Fed. Credit Bank*, 630 F.3d 1139, 1151 (9th Cir. 2011); *see Turtle Island*, 673 F.3d at 918 ("where claims arise from the same factual circumstances, a plaintiff must bring all related claims together or forfeit the opportunity to bring any omitted claim in a subsequent proceeding").

Here, plaintiffs' claims not only *could* have been brought in the prior action, they *were* brought in that action. In this case, just as in the previous two, plaintiffs "challenge[d] Defendants' conduct in connection with the process of Arrington's loan application and the eventual foreclosure of residential property.... Plaintiffs' claims allege that the conduct of the defendants in processing the loan and the foreclosure sale were improper and invalid." OER 1:33 (DE 59, at 8); *see id.* (the "same rights and interests are at issue in the instant case as were adjudicated in the previous actions").[8] Thus, the "identity of claims" factors are readily satisfied: the two suits arise out of the same nucleus of facts and involve infringement of

[8] Plaintiffs did allege new causes of action and added the additional factual allegation that Cendant "improperly substituted a trustee before the foreclosure sale" (OER 1:33 & nn.4-5 (DE 59, at 8 & nn.4-5)), but plaintiffs offer no reason to think that those additions meaningfully changed the complaint, or could not have been brought in the prior actions.

the same right, and defendants' interests in the finality of the prior litigation would be impaired by this action.

Second, there was a final judgment on the merits. Final judgment on the merits is "synonymous" with "dismissal with prejudice." *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005). And a "dismissal for failure to state a claim under Rule 12(b)(6) is a 'judgment on the merits' to which res judicata applies." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002). In the second action, the district court dismissed Hollis-Arrington's claims against all defendants as a matter of law or for failure to state a claim, and this Court affirmed the district court's decision. *See* SER-1 (entry of judgment); SER-2-6 (judgment and memorandum affirming district court). That dismissal is a judgment on the merits.

Third, there was identity or privity between the parties. "'Privity'—for purposes of applying the doctrine of res judicata—is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *United States v. Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997). "[W]hen two parties are so closely aligned in interest that one is the virtual representative of the other, a claim by or against one will serve to bar the same claim by or against the other." *Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004) (quotation omitted).

Because Fannie Mae and Hollis-Arrington were parties to the prior proceedings, the only privity question is whether Crystal Lightfoot was in privity with Hollis-Arrington. She was: she is Hollis-Arrington's daughter, resided in the home that is the subject of this dispute, was temporarily the owner of the property, and her interests in the litigation are precisely the same as her mother's. That relationship easily suffices to establish privity. *See Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996) (privity existed between woman and her grandmother where the "interests of [the woman] and her grandmother are so similar that [the woman's] grandmother virtually represented [her] in [the prior action]").

Because all three elements of res judicata exist here, the district court properly dismissed plaintiffs' claims on res judicata grounds, as this Court previously recognized.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS' RULE 60(b) MOTION

This Court should also affirm the district court's denial of plaintiffs' Rule 60(b) motion because it is yet another attempt to re-litigate issues that have already been litigated and decided multiple times over. Under Federal Rule of Civil Procedure 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding" where, under Rule 60(b)(2), there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial"

or, under Rule 60(b)(3), there is "fraud ... misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(2), (3). "A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order of the date of the proceeding." *Id.* R. 60(c)(1). District courts "lack discretion to bend the one-year limit." *McKnight v. Neven*, 366 F. App'x 841, 843 (9th Cir. 2010); *see Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000) ("[t]he limitations period [in Rule 60] is 'absolute'" (quoting 12 James Wm. Moore et al., Moore's Federal Practice § 60.65[2][a], at 60-200 (3d ed. 1997)).

To prevail under Rule 60(b)(2), the moving party must show that the "newly discovered" evidence was not in its "possession at the time of trial" and could not have been "discovered with reasonable diligence," and that the "newly discovered" evidence would likely have changed the outcome of the case. *Coastal Transfer Co. v. Toyota Motor Sales*, U.S.A., 833 F.2d 208, 212 (9th Cir. 1987). To prevail under Rule 60(b)(3), the moving party must "'prove by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense.'" *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *De Saracho v. Custom Food Mach.*, Inc., 206 F.3d 874, 880 (9th Cir. 2000)). The fraud must "not be discoverable by due diligence before or during the proceeding" and must be "materially related to the submitted issue." *Pac. &*

Arctic Ry. & Navigation Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991).

Here, plaintiffs' request for Rule 60 relief fails both because it is untimely and because plaintiffs have failed to satisfy the requirements of either Rule 60(b)(2) or (3).

A. The District Court Properly Held That Plaintiffs' Rule 60(b) Motion Was Untimely

As noted above, a motion under either Rule 60(b)(2) or (3) must be made within a "reasonable time" and, in any event, no later than "a year after the entry of the judgment or order of the date of the proceeding." Fed. R. Civ. P. 60(c). "'What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties.'" *Lemoge v. United States*, 587 F.3d 1188, 1196-97 (9th Cir. 2009) (quotation omitted).

Here, the district court granted Fannie Mae's motion to dismiss on February 20, 2003. Plaintiffs did not file this motion until June 11, 2010—over seven years later. That delay was unreasonable, to say the least. As the district court noted, plaintiffs could have filed many years earlier because "the documents are public records and Plaintiffs presented the same facts to the Court more than seven years ago." OER 1:94 (DE 117, at 8). Moreover, given that this Court already affirmed the district court's motion to dismiss,

defendants had every reason to rely on the finality of that decision. Plaintiffs have offered no reason to disrupt that finality now. Indeed, plaintiffs' only argument on appeal was that the Rule 60(b) motion was filed within one year of judgment. Pls. Original Br. 17 ("Adjudication of Attorneys Equity (for the purpose of a rule 60(b) motion) was not complete until 6/11/2010. It was that judgment which was tantamount to final adjudication of this case. Appellants rule 60(b) motion was filed on 9/17/2010, well within the one year time frame to consider the motion as timely."). But even if that were right,[9] it provides no excuse for plaintiffs' failure to file within a reasonable time. "The one-year period represents an extreme

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[9] The district court held that it was not right and that it "lack[ed] jurisdiction" to consider the motion "due to the expiration of the one-year time period." OER 1:93 (DE 117, at 7). As the court explained, "[b]ecause the parties treated the order of dismissal as a judgment, the Court finds that, for purposes of Rule 60(b)(3), judgment was entered as to these defendants on July 21, 2003, which was 150 days from the date of entry of the February 20, 2003 order of dismissal. Therefore, Plaintiffs should have sought relief for alleged fraud committed by Defendants in procuring the dismissal of the action by July 21, 2004, which was one year from the date on which the judgment would have been entered pursuant to Federal Rule of Civil Procedure 58." *Id.* (internal citation omitted). This Court need not decide whether plaintiffs' motion was filed outside the one-year time period because either way, the delay was completely unreasonable. *Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation ("C.N.A.N.")*, 605 F.2d 648, 656 (2d Cir. 1979) ("Although Judge Tenney was incorrect in his determination that the Rule 60(b)(1) motion was filed over a year after judgment, his ultimate holding that the motion was untimely can be founded upon the alternative requirement that motions under the Rule be made within 'a reasonable time.'"

limit, and the motion will be rejected as untimely if not made within a 'reasonable time' even though the one-year period has not expired." Federal Practice & Procedure § 2866. Plaintiffs' motion was exceedingly untimely, and that is alone sufficient basis to affirm the district court's decision.

B. The District Court Did Not Abuse Its Discretion When It Denied Plaintiffs' Rule 60(b) Motion

As noted above, to satisfy the requirements of Rule 60(b), the moving party must present new evidence that could not have been discovered prior to the entry of judgment and that would likely change the outcome of the case. Here, plaintiffs failed to make that showing. Indeed, as the district court explained, plaintiffs previously filed a motion to set aside the judgment based on the same evidence identified in this motion. OER 1:94 (DE 117, at 8). Even at that time, the district court concluded that the evidence on which plaintiffs relied "could have been discovered through the exercise of diligence prior to the entry of judgment." *Id.* at 50 (DE 79, at 50). "The documents are public recordations available to members of the public that seek their production. Additionally, plaintiffs' own submission of the documents as printouts from Lexis-Nexis indicate that, prior to entry of judgment in this proceeding, plaintiff could have obtained copies of these documents." *Id.* In fact, according to the district court, plaintiff "had this information since the filing of [the] case." *Id.* at 50 n.1 (DE 79, at 50 n.1).

The district court also held that "production of the alleged new evidence would not have changed the outcome of the case." *Id.* at 94 (DE 117, at 8); *see id.* at 50-51 (DE 79, at 50-51) ("the Court finds that production of these documents would not have changed the Court's finding that defendants were entitled to dismissal of plaintiff's claims in this action"). Indeed, plaintiffs do not meaningfully argue otherwise in either their original brief or their supplemental brief. *See, e.g., Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned.").

This Court affirmed the district court's denial of plaintiffs' first Rule 60(b) motion nearly ten years ago. SER-7-8. It should affirm the denial of this one now.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

/s/ Jonathan D. Hacker

JONATHAN D. HACKER
MICHAEL WALSH
O'MELVENY & MYERS LLP
1625 Eye Street, N.W. Washington, D.C. 20006
(202) 383-5300
(202) 383-5414 (fax)

JAN T. CHILTON
SEVERSON & WERSON
One Embarcadero Center
26th Floor
San Francisco, CA 94111
(415) 398-3344
(415) 956-0439 (fax)

Attorneys for Defendant-Appellee
Fannie Mae

STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, defendant Federal National Mortgage

Association states that it is aware of the following related cases that are now pending or were pending in this Court, in addition to those previously identified by plaintiffs:

1. *Hollis-Arrington v. Cendant Mortg.*, No. 02-56279 (same transactions)

2. *Hollis-Arrington v. Cendant Mortg.*, No. 02-56280 (same transactions)

3. *Lightfoot v. U.S. District Court for Central California*, No. 09-74079 (same district court case)

4. *Hollis-Arrington v. Cendant Mortg.*, No. 10-56651 (same transactions)

Dated: February 4, 2013

/s/ Jonathan D. Hacker
Jonathan D. Hacker

RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT
AND BEVERLY HOLLIS-ARRINGTON,
Petitioners,

v.

CENDANT MORTGAGE CORP., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONERS

Andrew H. Friedman
Gregory D. Helmer
HELMER FRIEDMAN, LLP
8522 National Boulevard
Suite 107
Culver City, CA 90232

E. Joshua Rosenkranz
Counsel of Record
Thomas M. Bondy
Kevin Arlyck
Matthew L. Bush
Cynthia B. Stein
Louisa Irving
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

Counsel for Petitioners

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QUESTIONS PRESENTED

The congressional charter of the Federal National Mortgage Association (Fannie Mae or Fannie) includes among its corporate powers the capacity, "in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). The Ninth Circuit concluded that this clause automatically confers subject matter jurisdiction on the federal district courts in any case involving Fannie. In so holding, the court applied a rule that a sue-and-be-sued clause confers federal jurisdiction "if it specifically mentions federal courts." Pet. App. 6a. The court believed that rule was dictated by this Court's decision in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992).

The questions presented are:

1. Does a clause that grants a federally chartered corporation the capacity to "sue and to be sued" in courts "of competent jurisdiction" require an independent source of subject matter jurisdiction?

2. *Red Cross* held only that a sue-and-be-sued clause "may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. Does that mean that the mere presence of the term "federal court" in such a clause is sufficient to confer subject matter jurisdiction on the federal district courts, and, if so, should that decision be overruled?

PARTIES TO THE PROCEEDINGS

Petitioners, who were Plaintiffs-Appellants below, are Crystal Lightfoot and Beverly Hollis-Arrington.

Respondents, who were Defendant-Appellees below, are Cendant Mortgage Corporation, doing business as PHH Mortgage; Fannie Mae; Robert O. Matthews; and Attorneys Equity National Corporation.

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OPINIONS AND ORDERS BELOW

The opinion of the court of appeals affirming the dismissal of Petitioners' claims is reported at 769 F.3d 681 and reprinted at Pet. App. 3a-40a. The district court's order denying Petitioners' motion to remand to state court is unreported and reprinted at Pet. App. 43a-44a.

JURISDICTION

The court of appeals entered judgment on October 2, 2014. The court of appeals denied rehearing on November 20, 2014. The petition for a writ of certiorari was timely filed on February 17, 2015, and granted on June 28, 2016. This court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

12 U.S.C. § 1723a(a) provides:

> **(a) Seal, and other matters incident to operation**
>
> Each of the bodies corporate named in section 1717(a)(2) of this title shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to enter into and perform contracts, leases, cooperative agreements, or other transactions, on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or the Commonwealth of Puerto Rico, or with any political subdivision

thereof, or with any person, firm, association, or corporation; to execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal, but no attachment, injunction, or other similar process, mesne or final, shall be issued against the property of the Association or against the Association with respect to its property; to conduct its business without regard to any qualification or similar statute in any State of the United States, including the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States; to lease, purchase, or acquire any property, real, personal, or mixed, or any interest therein, to hold, rent, maintain, modernize, renovate, improve, use, and operate such property, and to sell, for cash or credit, lease, or otherwise dispose of the same, at such time and in such manner as and to the extent that it may deem necessary or appropriate; to prescribe, repeal, and amend or modify, rules, regulations, or requirements governing the manner in which its general business may be conducted; to accept gifts or donations of services, or of property, real, personal, or mixed, tangible, or intangible, in aid of any of its purposes; and to do all things as are necessary or incidental to the

> proper management of its affairs and the proper conduct of its business.

28 U.S.C. § 1349 provides:

> The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.

INTRODUCTION

This case presents a clash: the plain English meaning of a statute versus a rigid rule that defies the ordinary tools of statutory construction and bears no relation to any interpretive technique this Court has ever applied.

Let us begin with plain English: Fannie Mae's charter says that Fannie "shall have power ... in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). That clause means what it says: Fannie has the capacity to bring suit on its own behalf, and can likewise be sued by others. No English speaker could read that sentence to mean what the Ninth Circuit concluded: that Congress granted *jurisdiction* to "any court ... State or Federal." Rather, the charter authorizes Fannie to litigate—but only in a "court of *competent* jurisdiction," which is to say a court that has an *independent* basis of jurisdiction.

Nevertheless, the Ninth Circuit held that these simple words mean that Congress granted jurisdiction to federal district courts over any case involving Fannie. Notably, the Ninth Circuit did not think this meant that Congress granted jurisdiction to "*any* court ... *State*"; state courts must have an otherwise "competent" basis of jurisdiction. Nor did the Ninth Circuit think this meant that Congress granted jurisdiction to "*any* court ... *Federal*"; the Court of Federal Claims, for example, is not a proper forum unless it has "competent" jurisdiction. Yet, according to the Ninth Circuit, any federal district court has jurisdiction, whether or not there is any independent basis for it.

The English language cannot get you from here to there. And the Ninth Circuit did not even try to reconcile its reading with the statute's plain meaning. It skipped past the text (and the context and the statutory evolution), in favor of a rule of construction that revolves around a single term—"federal court." The "rule," according to the Ninth Circuit, is that "a specific reference to the federal courts [i]s necessary *and sufficient* to confer jurisdiction." Pet. App. 11a (citation and internal quotation marks omitted).

There is no such "rule," and if there were, it would be absurd. It would mean that federal courts would have automatic jurisdiction over any suit involving an entity even if the charter granted the "power to sue and be sued in any court, State or Federal, that independently has jurisdiction over the case." Fannie's charter is functionally no different.

The Ninth Circuit applied this purported rule only because it thought its hands were tied. It believed that this Court's decision in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), adopted this as a "clear rule," Pet. App. 5a. But *Red Cross* said no such thing. Rather, it followed a line of cases about sue-and-be-sued clauses that examined each charter as a whole—and applied the traditional tools of statutory construction. The presence of the term "federal court" is relevant, but alone does not grant jurisdiction.

Here, Congress's decision to specify that Fannie cannot sue or be sued in any court, unless it is a "court of competent jurisdiction," confirms that Congress did not intend to give the federal courts the authority to hear any case—however trivial, however divorced from federal law, however small the amount in controversy—simply because Fannie is a party. Since the charter in *Red Cross* did not contain such a limitation, that case does not require this Court to ignore the plain language of Fannie's charter. But if this Court concludes that *Red Cross* articulated an "if 'federal' then jurisdiction" rule, it should overrule any such magic-word test in favor of its customary approach to interpreting statutes.

STATEMENT OF THE CASE

This case presents the story of a congressionally chartered entity that was born as a federal agency and converted to a private entity—and the jurisdictional provision that adapted to that transition.

Congress Creates Fannie Mae As A Government-Owned Entity That Could Sue And Be Sued In Federal Court

The story begins with the National Housing Act of 1934, a body of New Deal legislation enacted to buoy the nation's recovery from the housing crisis brought on by the Great Depression. Pub. L. No. 73-479, ch. 847, 48 Stat. 1246. The Act authorized a federal agency to create "national mortgage associations" to purchase and resell mortgage loans in the secondary mortgage market, thereby boosting lender liquidity and increasing the availability of low-cost mortgages to homebuyers. *See* 48 Stat. at 1252-55; Richard W. Bartke, *Fannie Mae and the Secondary Mortgage Market*, 66 N.W. L. Rev. 1, 16-17 (1971).

Thus was born the Federal National Mortgage Association—aka Fannie Mae. Fannie began life as a national association with capital stock owned by the government. *See* HUD, *Background and History of the Federal National Mortgage Association* 7-9, A-4. (1966) [hereinafter *Fannie Background and History*]. Fannie's charter conferred a laundry list of standard corporate powers. One was the capacity "to sue and be sued, complain and defend, in any court of law or equity, State or Federal." 48 Stat. at 1253; *see* Act to Amend the Servicemen's Readjustment Act of 1944, Pub. L. No. 80-864, ch. 784, 62 Stat 1206, 1208 (1948).

At the time, a separate provision governed jurisdiction over any suit involving Fannie. That provision, currently codified as 28 U.S.C. § 1349 (originally 28 U.S.C. § 42), granted district courts jurisdiction

over civil actions involving federally chartered corporations that were more than 50% government-owned (as Fannie then was). Thus, at its inception, Fannie was subject to the full scope of federal court jurisdiction—but not because of its sue-and-be-sued clause. *See* U.S. Cert. Br. 16.

Congress Amends The Sue-And-Be-Sued Provision While Placing Fannie On The Path to Privatization

In 1954, Congress decided to reduce the government's role in the housing market, particularly in the secondary mortgage market. Through this legislation, Congress set Fannie on a path to privatization.

Early on, Fannie's primary purpose was to increase lender liquidity by purchasing and reselling mortgages and issuing bonds to investors, and to promote the construction and financing of new homes by making direct loans secured by federally insured mortgages. *Fannie Background and History*, *supra*, at 10 & n.14. Most of its financing came from the U.S. Treasury. *Id.* at A-10. Contrary to Congress's expectation, however, by 1954 this approach was not spurring private investment in the secondary mortgage market. *See* James R. Hagerty, *The Fateful History of Fannie Mae: New Deal Birth to Mortgage Crisis Fall*, 21-24 (2012). Rather, it deterred private investors who felt ill-equipped to compete with the federal government. *See id.*

At the same time, the public was agitating over the expansion of government-controlled corporations generally. By the end of World War II, there were

nearly 60 public corporations. Their drain on public resources "had gotten out of hand." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 389 (1995); *see* Paul E. Lund, *Federally Chartered Corporations and Federal Jurisdiction*, 36 Fla. St. U. L. Rev. 317, 323 (2009).

Government activity in the housing market was a particular target of criticism. After assuming office in 1953, President Eisenhower assembled an advisory committee to "clearly identify the proper role of the Federal Government in the housing field." President's Advisory Committee on Government Housing Policies and Programs: A Report to the President of the United States iv (1953). The committee recommended overhauling the government's involvement in the secondary mortgage market to increase private investment and "operate without expense to the Federal government." *Id.* at 349.

The 1954 legislation split Fannie's "secondary market" functions—through which Fannie increased liquidity in the mortgage market by purchasing mortgages at market price—from other functions that were more governmental in nature.[1] Housing Act of 1954, Pub. L. No. 83-560, ch. 647, § 301, 68 Stat. 590, 612-13. Congress directed Fannie to eventually trans-

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[1] The more governmental functions were: (1) "special assistance," which involved acquiring and securitizing mortgages that were "not necessarily readily acceptable to [private] investors," § 305, 68 Stat. at 616-17; and (2) "management and liquidat[ion]" of Fannie's portfolio of assets and liabilities acquired up to 1954, § 306, 68 Stat. at 618-19; *see* Hagerty, *supra*, at 31-33.

fer the secondary market functions to private investors. *See* § 303, 68 Stat. at 615. The goal was that "the Government investment in [Fannie] would gradually be replaced by private investment funds," making Fannie a private entity. H.R. Rep. No. 83-2271, at 81 (1954) (Conf. Rep.).

The privatization would eventually alter the jurisdictional regime governing Fannie. Once private investors owned 50% or more of Fannie's stock, the district courts would no longer have automatic jurisdiction under § 1349. Unless Fannie's charter itself expressly conferred jurisdiction, the general rules governing the authority of the federal courts (e.g., diversity and federal question jurisdiction) would govern.

In the same legislation that set Fannie on the path to privatization, Congress amended the sue-and-be-sued clause in Fannie's charter as follows: "[Fannie] shall have power to ... sue and ***to*** be sued, ***and to*** complain and ***to*** defend, in any court of ~~law or equity~~ ***competent jurisdiction***, State or Federal." *Compare* 48 Stat. at 1253, *with* § 309, 68 Stat. at 620. The resulting language remains in place today. 12 U.S.C. § 1723a(a).

Fannie Achieves Its Status As A Private Corporation

More than a decade later, the privatization was falling short of expectations: Private lenders had purchased only small amounts of Fannie's common stock. *See* H.R. Rep. No. 90-1585, at 68 (1968); Hagerty, *su-*

pra, at 32. Completing the transition had become urgent. A proposed revision of federal budgetary practices would include the debts of agencies like Fannie in the federal budget. The administration worried that including Fannie's substantial debt on the government's ledger would alarm the public. Hagerty, *supra*, at 35-37. President Johnson urged Congress to take more urgent steps to "transfer [Fannie's] secondary market operation ... to completely private ownership." A Message on Housing and Cities from the President of the United States, H.R. Doc. No. 90-261 at 13 (1968). Congress obliged in a statute directing Fannie to retire its government-held stock and transfer Fannie to private ownership "as rapidly as possible." Federal National Mortgage Association Charter Act Amendments, Pub. L. No. 90-448, § 802(i)(6), 82 Stat. 536, 537 (1968); 68 Stat. at 613.

To formally separate the to-be-privatized secondary market operations from Fannie's other functions, Congress created a new entity, the Government National Mortgage Association—aka Ginnie Mae. § 802, 82 Stat. at 536 (codified as amended at 12 U.S.C. § 1717). Ginnie, a government-owned corporation within the Department of Housing and Urban Development, assumed Fannie's more governmental functions. § 801, 82 Stat. at 536. By statute, Ginnie and Fannie share the same corporate powers, including the same sue-and-be-sued capacity. 12 U.S.C. § 1723a(a). But unlike Fannie, Ginnie "ha[s] plenary access to the federal courts as an agency of the federal government." Pet. App. 39a (Stein, J., dissenting) (citing 28 U.S.C. §§ 1345, 1346); *see Gov't Nat'l Mortg. Ass'n v. Terry*, 608 F.2d 614, 616 (5th Cir. 1979).

Congress Further Clarifies The Federal Courts' Jurisdiction Over Cases Involving Fannie

In 1974, Congress made another amendment to Fannie's charter, this one relating specifically to "jurisdiction." By then, Fannie's privatization was complete; the government no longer held Fannie stock. *See* 116 Cong. Rec. 23,996, 23,997 (July 13, 1970) (letter from Assistant Attorney General William H. Rehnquist to HUD Under Secretary Richard C. Van Dusen) [hereinafter Rehnquist letter]. That meant that litigation involving Fannie was no longer subject to automatic federal jurisdiction under § 1349. A natural question, then, was how to treat Fannie for purposes of diversity. Under 28 U.S.C. § 1332, a corporation is a citizen of its state of incorporation and where it has its principal place of business, but at the time, federally chartered corporations were not considered "citizens" of any "State" for the purposes of § 1332. Pet. App. 38a (Stein, J., dissenting) (citing *Bankers' Tr. Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 309-10 (1916); *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 & n.4 (9th Cir. 1974)).

The 1974 amendment changed that for Fannie. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 806(b), 88 Stat. 633, 727 (codified as amended at 12 U.S.C. § 1717(a)(2)(B)); Pet. App. 38a. The charter previously required Fannie "to maintain [its] principal office in the District of Columbia," and provided that Fannie "shall be deemed, for purposes of venue in civil actions, to be a resident thereof." Pet. App. 37a (citation omitted). Congress revised the clause to permit Fannie to maintain its office in the District of Columbia "or the metropolitan

area thereof," and provided that Fannie "shall be deemed, for purposes of *jurisdiction* and venue in civil actions, to be a District of Columbia corporation." § 806(b), 88 Stat. at 727 (emphasis added); Pet. App. 37a-38a. By specifying Fannie's citizenship, Congress made diversity jurisdiction possible.

Though Congress took similar action with respect to national banking associations, Pet. App. 38a-39a, it did not make the same amendment to Ginnie's charter. Ginnie's status as a wholly owned government entity confers automatic jurisdiction on the federal courts, and it has "no use for diversity jurisdiction." Pet. App. 39a.

Petitioners Bring State Law Claims Against Fannie And Fannie Removes

In 2002, Petitioners Crystal Lightfoot and Beverly Hollis-Arrington initiated this litigation, pro se, by filing state law claims related to the foreclosure of their home against Respondents in California state court. JA 27-58. Fannie removed to federal court, arguing that its charter automatically confers subject matter jurisdiction on the federal district courts over all suits to which Fannie is a party. Pet. App. 45a-49a.

Petitioners moved to remand to state court, on the ground that Fannie's charter provides no basis for jurisdiction in federal court. JA 59-62. The district court denied the motion. Pet. App. 43a-44a. While briefing on the remand issue was ongoing, Respondents moved to dismiss the case on res judicata and collateral estoppel grounds in light of prior federal court litigation.

JA 17. The district court granted the motion as to Respondents Fannie and Cendant Mortgage Corporation. JA 80-84.

Petitioners filed a motion to set aside the judgment, which the district court denied and the Ninth Circuit summarily affirmed. JA 87-94, 111-12. Petitioners subsequently moved the district court to enter final judgment. JA 21. The district court did so consistent with its prior orders granting Respondents' motions to dismiss. JA 21-23. Petitioners then filed a motion to set aside the judgment under Federal Rule of Civil Procedure 60(b). JA 95-110. The district court denied that motion. JA 24-25.

The Ninth Circuit Affirms, Holding That Fannie's Charter Confers Federal Jurisdiction

Petitioners (still pro se) appealed, arguing that the district court lacked subject matter jurisdiction because Fannie's charter does not automatically confer it. JA 25. The Ninth Circuit initially affirmed, reasoning that the district court had jurisdiction "because state claims filed to circumvent the res judicata impact of a federal judgment may be removed to federal court." *Lightfoot v. Cendant Mortg. Corp.*, 465 F. App'x 668, 669 (9th Cir. 2012). After Petitioners filed a petition for rehearing en banc, the court sua sponte withdrew its disposition, appointed pro bono counsel to represent Petitioners, and ordered briefing on whether Fannie's charter grants the district court automatic federal jurisdiction. Pet. App. 5a.

In the ruling at issue here, a divided panel of the Ninth Circuit held that Fannie's charter confers federal jurisdiction over all cases to which Fannie is a party. Pet. App. 4a. The court invoked *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), for the proposition that if a "specific reference to the federal courts" appears in a sue-and-be-sued charter, then federal jurisdiction exists. Pet. App. 11a. The court did not believe that the evolution of the charter in 1954 and 1974 changed the analysis. Pet. App. 9a-11a, 15a-21a.

In dissent, Judge Stein disagreed with the majority's reading of *Red Cross*, emphasizing that this Court did not announce a "magic-words test" whereby the inclusion of the word "federal" necessarily confers jurisdiction. Pet. App. 25a. Instead, *Red Cross* merely restated a background principle designed to help Congress write—and help courts interpret—sue-and-be-sued clauses. Pet. App. 25a. Turning to Fannie's clause, Judge Stein noted that the "of competent jurisdiction" charter language could only be read to require an independent basis for jurisdiction. Pet. App. 26a-32a. Judge Stein also observed that Congress's effort in 1954 to put Fannie on the path to privatization confirmed that it intended that jurisdiction be governed by the "default rule" in § 1349. Pet. App. 36a & n.5. In addition, he explained that the 1974 amendments clarified Fannie's citizenship for purposes of diversity jurisdiction, and that this clarification would have been "frivolous" had the sue-and-be-sued clause already conferred jurisdiction. Pet. App. 40a.

SUMMARY OF THE ARGUMENT

I. When interpreting a statute, a court must read the text in accord with its plain meaning. The text of Fannie's charter is clear: Fannie has the power to sue and be sued in any state or federal court that otherwise has jurisdiction over the case. Situated among Fannie's corporate powers, the sue-and-be-sued clause is a grant of capacity, not jurisdiction.

Congress made plain its intent not to grant jurisdiction by specifying that Fannie cannot sue or be sued in any court unless it is "of competent jurisdiction"—i.e., the court must have an "outside source[] of jurisdictional authority." *Califano v. Sanders*, 430 U.S. 99, 106 n.6 (1977). Fannie and the Ninth Circuit both admit that this requirement applies to suits involving Fannie in state and specialized federal courts, yet they offer no good reason why it does not likewise apply to suits in federal district court. Congress knows full well how to expressly confer jurisdiction over federally chartered entities—including others that operate in the housing market. There is no reason to read Fannie's charter as implicitly doing so—especially when such a reading would violate the default rule Congress had previously established for conferring jurisdiction over such entities.

Fannie's history and the consequent evolution of its charter confirm what the text already makes plain—that the sue-and-be-sued clause does not confer jurisdiction. Concerned that Fannie's governmental power was undermining the private mortgage market, in 1954 Congress put Fannie on the path to privatization. As part of that legislation, Congress

added the "of competent jurisdiction" language to Fannie's charter, to confirm that, once it was privatized, the federal courts would no longer have automatic jurisdiction over suits involving Fannie under 28 U.S.C. § 1349. Fannie would have to compete on a level playing field just like any other market participant—including in the courts.

Congress erased any doubts about its intentions in 1974, when it further amended Fannie's charter to designate it "a District of Columbia corporation" for "purposes of jurisdiction and venue." Having recently achieved private status, Fannie was no longer subject to automatic federal jurisdiction under § 1349. By clarifying where Fannie was a citizen, Congress ensured that the federal courts could hear suits involving Fannie under their diversity jurisdiction. If Fannie's charter already gave the federal courts automatic jurisdiction, such an amendment would have been unnecessary.

II. In reaching its erroneous conclusion, the Ninth Circuit put the text and evolution of Fannie's charter to the side, and rested its decision instead on the fact that the sue-and-be-sued clause includes the term "federal court." According to the Ninth Circuit, this Court's decision in *Red Cross* adopted a rule making that sufficient to confer jurisdiction.

But neither *Red Cross* nor any other decision of this Court created such a rule. In *Red Cross*, this Court said that a charter "*may* be read to confer federal court jurisdiction *if, but only if*, it specifically mentions the federal courts." 505 U.S. at 255 (emphasis added). In so holding, *Red Cross* relied on this

Court's previous cases, which similarly held that reference to "federal courts" was but one indicator of Congress's jurisdictional intent—a factor to be considered in tandem with the statutory text as a whole, its context, and its history.

The charter at issue in *Red Cross* differs from Fannie's in crucial respects. Most notably, the Red Cross's charter does not include the phrase "of competent jurisdiction" or anything like it. Accordingly, there is nothing in the charter itself suggesting the need for an external basis of jurisdiction. Nor was this Court obliged to read the Red Cross's charter against § 1349's default rule, because that rule did not apply. And while principles of statutory interpretation required this Court to give independent effect to the term "federal court" in the Red Cross's charter, the same principles mandate that "of competent jurisdiction" in Fannie's be treated as more than mere surplusage.

For these reasons, the Ninth Circuit was wrong in believing that *Red Cross* dictated the decision below. But if this Court agrees that *Red Cross* created an "if federal, then jurisdiction" rule, this Court should overrule that decision. Such "magic words" jurisprudence is at odds with how this Court interprets statutes, and is not mandated by this Court's precedent. And while stare decisis generally counsels in favor of preserving precedent, its force is lessened when—as here—the precedent in question generates confusion and threatens absurd results.

III. Reading Fannie's charter in accord with its plain meaning and its history makes sense for an additional reason: avoiding constitutional difficulty. As this Court has recognized, while Congress's jurisdiction-conferring power under Article III is broad, it is not limitless. In particular, this Court has expressed doubt about whether the mere possibility of a federal question arising in a case is constitutionally sufficient to justify "arising under" jurisdiction. As a result, the Court has been reluctant to condone statutes that purport to grant jurisdiction over cases that present no substantive issue of federal law—as the Ninth Circuit has read Fannie's charter to do. Rather than ratify the Ninth Circuit's counter-textual reading of the statute, this Court should sidestep the constitutional problem of Congress's Article III authority and give the charter its plain and natural meaning.

ARGUMENT

I. Fannie's Charter Does Not Confer Jurisdiction.

The Ninth Circuit's decision violates the basic rule of statutory interpretation that, "[i]n determining the meaning of a statutory provision, [courts] look first to its language, giving the words used their ordinary meaning." *Lawson v. FMR LLC*, 134 S. Ct. 1158, 1165 (2014) (internal quotation marks omitted). What Fannie's sue-and-be-sued clause says, in plain English, is clear: Fannie can bring claims in court, and claims can be brought against Fannie. 12 U.S.C. § 1723a(a). It does not say that the federal courts automatically have jurisdiction over all those claims.

True, when Congress amended Fannie's charter in 1954 it perhaps had some reason to believe courts might misconstrue the sue-and-be-sued clause as a grant of original federal jurisdiction. But Congress eliminated that possibility by adding the "of competent jurisdiction" language, making it clear that the power to sue and be sued was only that, and not an independent grant of jurisdiction. The Ninth Circuit dismissed that amendment and another as irrelevant, Pet. App. 14a-21a, but it got that wrong too. The plain language of the amendments, and the context in which they were enacted, confirm Congress's intent to require an independent source of federal jurisdiction, so that Fannie, once privatized, would be treated for jurisdictional purposes like any other private corporation. Certainly, nothing in that statutory progression justifies imbuing the statute's language with content that contradicts its plain meaning.

A. The plain language of Fannie's sue-and-be-sued clause does not confer jurisdiction.

1. Fannie's charter grants it "the power ... in its corporate name, to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U.S.C. § 1723a(a). "Boil[ed] ... down to its relevant syntactic elements," that clause gives Fannie the power to adjudicate disputes in courts that are otherwise jurisdictionally competent to hear them. *Lawson*, 134 S. Ct. at 1165 (internal quotation marks omitted). It does nothing to alter the authority of the federal district courts, nor

does it grant the district courts subject matter jurisdiction over any case involving Fannie, no matter how trivial.

When Congress granted Fannie the "power ... in its corporate name, to sue," it merely gave Fannie the legal capacity to institute a lawsuit in its own name—a capacity it would not otherwise enjoy as a federally chartered entity. *See Bankers' Trust*, 241 U.S. at 308 ("A corporation has no powers and can incur no obligations except as authorized or provided for in its charter." (internal quotation marks omitted)). The power "to be sued" means a corporation can have "legal proceedings [commenced] against" it. *Black's Law Dictionary* 1674 (3d ed. 1933). Congress needed to add that provision because Fannie could have been viewed as a federal agency immune from suit, and, absent strong indication to the contrary. "agencies authorized to 'sue and be sued' are presumed to have fully waived immunity." *FDIC v. Meyer*, 510 U.S. 471, 481 (1994) (internal quotation marks omitted).

Congress placed the sue-and-be-sued clause in the middle of a laundry list of more than a dozen standard corporate powers—none of which has anything to do with the jurisdiction of courts. On one side is the "power to adopt, alter, and use a corporate seal" and "to enter into and perform contracts." 12 U.S.C. § 1723a(a). On the other side is the "power to ... lease, purchase, or acquire any property" and "to accept gifts." *Id.* This list of powers simply reflects Fannie's authority to "do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business." *Id.*

Congress's decision to situate the clause in the middle of this list makes sense. When it authorizes a federal entity "to engage in commercial and business transactions" such as those contemplated by the clause, Congress "launche[s] [the] governmental agency into the commercial world." *Fed. Hous. Admin. v. Burr*, 309 U.S. 242, 245 (1940). Like the provisions surrounding it, the sue-and-be-sued clause grants Fannie judicial recourse to enforce its agreements and contracts, just as any business might. At the same time, in providing that Fannie can "be sued," Congress made clear that Fannie—like other governmental entities with similar charters—was "amenable to judicial process [as] a private enterprise under like circumstances would be." *Burr*, 309 U.S. at 245. As it has with numerous other entities, Congress included this clause to place Fannie on "an equal footing with private parties as to the usual incidents of suits." *Reconstruction Fin. Corp. v. J.G. Menihan Corp.*, 312 U.S. 81, 85-86 (1941).

2. The only reference to "jurisdiction" in Fannie's sue-and-be-sued clause confirms it does not confer any. The charter does not grant Fannie the capacity to sue and be sued in any state or federal court without qualification; it must be a "court of competent jurisdiction." A court of "competent jurisdiction" is one that has "outside sources of jurisdictional authority." *Califano*, 430 U.S. at 106 n.6; *see Black's Law Dictionary* 379, 459 (3d ed. 1933) (defining "competent" to include "[d]uly qualified; answering all requirements," and defining "Court of competent jurisdiction" as "[o]ne having power and authority of law at the time of acting to do the particular act"). As this Court has long recognized, a court of "competent jurisdiction" is

therefore simply a court that has jurisdiction to hear the case. *See, e.g.*, *Ex parte Crouch*, 112 U.S. 178, 180 (1884); *Ex parte Phenix Ins. Co.*, 118 U.S. 610, 617 (1886); *Louisville Tr. Co. v. Knott*, 191 U.S. 225, 234 (1903) (citing *Smith v. McKay*, 161 U.S. 255, 358 (1896)).

In *Shoshone Mining Co. v. Rutter*, this Court rejected the argument that a statute providing for suit "in a court of competent jurisdiction" granted automatic jurisdiction in the federal courts, explaining that the statute's plain language "unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal Courts." 177 U.S. 505, 506-07 (1900). As such, federal jurisdiction was proper only if the party seeking the federal forum established a separate federal question or diversity of citizenship. *Id.* at 507. Like the statute in *Shoshone*, Fannie's charter leaves a court's "competency" in the subject matter "to depend on other provisions of law." *Ex parte Phenix Ins. Co.*, 118 U.S. at 617.

Fannie's sue-and-be-sued clause is different from the one in *Shoshone* in that this one provides for suit "in any court of competent jurisdiction, *State or Federal*." But as a matter of plain English, that cannot make the difference. Fannie concedes that the clause cannot be read as a grant of jurisdiction to any *state* court; a state court cannot take jurisdiction over a Fannie case unless jurisdiction is *otherwise* "competent" in that court. Br. in Opp. 25 n.6; *see* JA 155 ("[L]itigants in state courts ... must satisfy the appro-

priate jurisdictional requirements" (internal quotation marks omitted)). The same must be true of any federal court.

In fact, Fannie concedes that too—at least partially. As Fannie admits, the clause does not mean that Petitioners could have sued Fannie in "any" "Federal" court—say, the Court of Federal Claims. Br. in Opp. 25 n.6. At least in that context, the "Federal" court must be a "court of competent jurisdiction," which can be determined only by reference to some source of jurisdiction outside this clause itself. Fannie has never explained how the same language can be read one way with respect to state courts and specialized federal courts, but another way with respect to federal district courts.

Congress certainly knows how to draft a charter that draws such a distinction. The charter this Court considered in *Osborn v. Bank of the United States* granted the Bank of the United States authority to "sue and be sued" in "State Courts having competent jurisdiction, and *in any Circuit Court of the United States*." 22 U.S. 738, 817 (1824) (emphasis added). But Fannie's charter does not say Fannie may sue or be sued "in state courts and specialized federal courts having competent jurisdiction, and in any district court of the United States." And it would be wrong to read it that way.

3. Congress also knows how to establish an independent basis for jurisdiction over a federal agency or corporation when that is what it wants to do. With respect to a variety of entities, Congress has provided that district courts "shall have jurisdiction," or "shall

have original jurisdiction," over suits involving that entity. *E.g.*, 12 U.S.C. § 1441b(h)(4)(A) (Resolution Funding Corporation); *id.* § 1789(a)(2) (National Credit Union Administration Board); *id.* § 2279aa-14(2) (Federal Agricultural Mortgage Corporation); 15 U.S.C. § 714b(c) (Commodity Credit Corporation); 20 U.S.C. § 1066d(5) (Secretary of Education); *id.* § 1082(a)(2) (Secretary of Education); 42 U.S.C. § 292j(a)(2) (Secretary of Health and Human Services). Importantly, Congress added the express jurisdictional grants in each of these statutes *in addition* to sue-and-be-sued clauses.

In particular, Congress has enacted these kinds of provisions with respect to other federal entities that, like Fannie, operate in the housing market. For example, the statute chartering the Federal Home Loan Mortgage Corporation (Freddie Mac) has a sue-and-be-sued clause, 12 U.S.C § 1452(c), but it also provides that "all civil actions to which [Freddie] is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value," 12 U.S.C. § 1452(f). And it expressly allows Freddie to remove "any" state court action to federal district court. *Id.*

Perhaps even more instructive is the Home Owner's Loan Act of 1933, another New Deal statute that Congress amended in 1954 in the same act that amended Fannie's charter. As amended, the Act granted the Home Loan Bank Board (HLBB) the power to "sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories." § 503(2), 68 Stat. at 635. But

the Act also explicitly provided that "the United States district court[s] ... shall have jurisdiction" to hold hearings and issue declaratory judgments and injunctions in disputes brought by the HLBB against member associations, and to enforce the HLBB's orders. *Id.*

If the sue-and-be-sued clauses in these statutes conferred subject matter jurisdiction by themselves, the express jurisdictional provisions that Congress added would be superfluous. As the Ninth Circuit acknowledged, a statute should be read so that "no part will be inoperative." Pet. App. 12a; *see Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014); *Corley v. United States*, 556 U.S. 303, 314 (2009).

4. Finally, any plain reading of Fannie's sue-and-be-sued clause must account for the default rule Congress established for jurisdiction over corporations like Fannie. Recall that § 1349 provides: "The district courts *shall not have jurisdiction* of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock." 28 U.S.C. § 1349 (emphasis added). Thus, before Fannie was chartered, Congress had already established a rule governing when the federal courts do and do not have jurisdiction with respect to actions by or against a federally chartered corporation.

If Congress intended to deviate from that baseline rule, it would have said so clearly. In fact, it expressly did so in Freddie's charter. It specified that "[n]otwithstanding section 1349 of title 28," Freddie is an

"agency" for purposes of 28 U.S.C. §§ 1345 and 1442, which grant the federal courts jurisdiction over suits involving the United States and its agencies and officers. 12 U.S.C. § 1452(f); *see id.* § 2279aa-14 (same for the Federal Agricultural Mortgage Corporation). At a minimum, if Congress saw Fannie's sue-and-be-sued clause as a grant of jurisdiction, it would have prefaced the grant with similar "notwithstanding" language.

This premise seems especially apt in light of § 1349's origins. The impetus for § 1349 was an opinion from this Court holding that federal question jurisdiction under § 1331 extended to all litigation involving federally chartered entities. *See Pacific R.R. Removal Cases*, 115 U.S. 1, 11 (1885). That meant federal courts had automatic jurisdiction over any suit involving a company with a federal charter, even if the company had no other involvement with, or ownership by, the government. The consequence was a "flood of litigation" that just did not belong in federal court. *Murphy v. Colonial Fed. Sav. & Loan Ass'n*, 388 F.2d 609, 612 (2d Cir. 1967) (internal quotation marks omitted). Congress thought it essential to "wipe[] out th[e] unfortunate decision." *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 379 n.50 (1959). So in 1925, just a few years before creating Fannie, Congress passed § 1349 to keep lawsuits just like this one out of federal court. Judiciary Act of 1925, Pub. L. No. 68-415, ch. 229, § 12, 43 Stat. 936, 941.

At the same time, Congress gave no indication—and has not since—that it wanted jurisdiction over a publicly traded corporation to depend on the presence of the term "federal court" in its sue-and-be-sued

clause. In adopting that view, the Ninth Circuit improperly substituted its own default interpretive rule for the one Congress enacted.

B. The evolution of Fannie's charter confirms Congress did not intend to confer jurisdiction.

The evolution of Fannie's charter, consistent with its plain meaning, confirms that Congress intended to require an independent source of federal court jurisdiction with respect to suits involving Fannie. When Congress set Fannie on the path from full federal ownership toward private ownership, it simultaneously amended Fannie's charter to explicitly require an outside basis of federal jurisdiction. § I.B.1. Then, in 1974, after the shift was complete, Congress further amended the charter to provide litigants with access to the federal courts through diversity jurisdiction. § I.B.2.

1. The 1954 Amendments added "of competent jurisdiction" because Congress wanted Fannie to be treated like a private enterprise.

a. As explained above (at 6-7), when Fannie was first created it was a wholly owned government entity. But in 1954, to moderate the government's heavy influence in the secondary mortgage market, Congress set Fannie on a path to privatization. The Housing Act of 1954 rechartered Fannie as a mixed-stock corporation and separated Fannie's secondary mortgage market operations from its other functions, providing a path by which Fannie's lenders would

take full control and ownership of its secondary mortgage business. *See* H.R. Rep. No. 83-1429, pt. 1, at 1-2 (1954); §§ 302-306, 68 Stat. at 613-19.

This transition would necessarily have an impact on federal jurisdiction. Under § 1349, jurisdiction was no longer automatic once the government's ownership stake in Fannie dipped below 50%. At that point, if Congress wanted federal courts to have automatic jurisdiction over any litigation involving Fannie, the charter would have to say so. But all indications are that Congress wanted no such thing; it wanted Fannie, once privatized, to be treated as any other private entity.

The original language of Fannie's charter did not clearly confer jurisdiction, but intervening case law raised the prospect that courts might interpret the sue-and-be-sued clause as doing so. In 1942—after Congress enacted Fannie's charter, but before the 1954 amendments—this Court suggested in *D'Oench, Duhme & Co. v. FDIC* that the district court's jurisdiction in that case was based on a statute granting the Federal Deposit Insurance Corporation the power to "sue or be sued 'in any court of law or equity, State or Federal.'" 315 U.S. 447, 455 (1942). As discussed more fully below (at 45-47), jurisdiction was not at issue in *D'Oench*, and in any event, the Court noted that another provision in the statute expressly conferred jurisdiction, *id.* at 456 n.2. But because Fannie's sue-and-be-sued provision at the time was substantially similar to the FDIC's, Congress could have anticipated that courts might read Fannie's charter to confer federal jurisdiction—if it did not change the language.

Tellingly, Congress did not maintain that language, but instead amended Fannie's sue-and-be-sued clause to its present formulation. Specifically, Congress replaced "law and equity" with "competent jurisdiction," authorizing Fannie "to sue and to be sued, and to complain and to defend, in any court of *competent jurisdiction*, State or Federal." § 309, 68 Stat. at 620 (emphasis added).

This would be the natural way to clarify that Congress did not want Fannie to have automatic jurisdiction in federal courts in perpetuity. As noted above (at 21-23), long before 1954, this Court had held that a court of "competent jurisdiction" is one whose jurisdiction "depend[s] on other provisions of law." *Ex parte Phenix*, 118 U.S. at 617. Congress's word choice clarified that, once private investors acquired a controlling stake in Fannie, the corporation would be subject to federal court jurisdiction only in such courts as otherwise had subject matter jurisdiction.

b. The Ninth Circuit gave three reasons for rejecting this account of the change. None is persuasive.

The Ninth Circuit's first argument was about the dog that didn't bark. It pointed out that the legislative history is "silent" about the addition of the "of competent jurisdiction" language. Pet. App. 9a-10a. In its view, if Congress in 1954 had intended to impose a "severe new restraint" on the federal courts' jurisdiction, it would not have done so quietly. *Id.*

But the "restraint" on jurisdiction was neither "severe" nor "new." As demonstrated above (at 18-21), the original "sue-and-be-sued clause" did not confer

jurisdiction. Because the 1954 amendment merely clarified the status quo, there was nothing "new" to debate. But even if Congress had thought otherwise, the 1954 amendments worked no dramatic change—and certainly nothing Congress would have viewed as "severe." Congress knew that federal courts would continue to have jurisdiction over suits involving Fannie for quite some time—by dint of § 1349. The 1954 amendments set Fannie on a "gradual[]" path to privatization that, when achieved, would tip Fannie beyond 50% private ownership. H.R. Rep. No. 83-2271, at 81. But Fannie would not achieve that status until 1970, after Congress enacted further legislation to accelerate the process. *See* § 802, 82 Stat. at 536-42; Rehnquist letter, 116 Cong. Rec. at 23,997.

Moreover, even if the 1954 amendment did represent a pronounced jurisdictional shift, Congress might well have been silent anyway. As the Ninth Circuit acknowledged, in the same legislation Congress amended the Federal Savings and Loan Insurance Corporation's charter to require an independent source of jurisdiction. Pet. App. 16a-17a. This change came with no debate and no explanatory statement in the legislative history. *Id.* (citing H.R. Rep. No. 83-1429, at 90-91 (1954); S. Rep. No. 83-1472, at 121-22 (1954)). If the dog didn't bark there, nothing can be discerned from its silence here. *See Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 592 (1980) ("In ascertaining the meaning of a statute, a court cannot, in the manner of Sherlock Holmes, pursue the theory of the dog that did not bark").

Finally, the premise fails here for a more fundamental reason: Dogs were in fact barking all over the

place. The "court of competent jurisdiction" language was incident to a broader overhaul of Fannie that the reviewing Senate Committee hotly opposed. It thought the House's proposed changes were unnecessary, and recommended only minor alterations to Fannie's charter. S. Rep No. 83-1472 at 33, 74-75 (1954). Notably, the Senate version of the bill, which the Conference Committee rejected, did not include the "of competent jurisdiction" language. *Id.* at 74-75, 121. There would have been no reason for the Senate to oppose that language if the drafters believed it permitted the district courts to exercise jurisdiction over all of Fannie's disputes even after Fannie became private; the Senate wanted Fannie to continue to be treated as a federal agency, which included agency-like access to the federal courts.

The Ninth Circuit's second argument was that, if Congress in 1954 was trying to require an independent basis for federal jurisdiction, it had a better way: It could have eliminated the word "federal," rather than adding "of competent jurisdiction." Pet. App. 11a-12a. The Ninth Circuit believed that "federal" was "the very word[] the Court had recently held sufficient to *confer* such jurisdiction in *D'Oench*." *Id.* at 11a.

But nothing in *D'Oench* indicated that removing "federal" was the only—or even the best—way to achieve that result. In fact, that fix would not have worked in *D'Oench*. Completely apart from the sue-and-be-sued clause, the statute there provided that suits involving the FDIC "'shall be deemed to arise under the laws of the United States.'" 315 U.S. at 455-56 & n.2 (quoting 12 U.S.C. § 264(j)). So removing

"federal" from the FDIC's sue-and-be-sued clause would not have eliminated federal jurisdiction. It would have been more reasonable for Congress in 1954 to conclude that inserting "court of competent jurisdiction" was the best way to distinguish Fannie's charter from one that explicitly conferred federal jurisdiction, by underscoring the need for an *independent* basis for jurisdiction. *See supra* 28-29.

As demonstrated more fully below (at 43-47), the Ninth Circuit was also wrong in suggesting that this Court's case law before *D'Oench* treated "federal" as a "magic word." Pet. App. 25a (Stein, J., dissenting). *Bankers' Trust*, for example, held that a charter conferring the power "to sue and be sued ... in all courts of law and equity within the United States" did not confer jurisdiction. 241 U.S. at 303-05. At no point in its analysis did this Court mention that the statute did not refer to federal courts. Rather, that opinion gave Congress reason to use the words it did here: This Court determined the clause did not contemplate original jurisdiction because its plain meaning only "render[ed] th[e] corporation capable of suing and being sued by its corporate name in any court ... whose jurisdiction *as otherwise competently defined* was adequate to the occasion." *Id.* at 303 (emphasis added).

Contrary to the Ninth Circuit's view, Congress had every reason to think that, by referring to federal and state courts in the undifferentiated manner in which it did, ordinary jurisdictional rules would apply in both. It need have looked no further than this Court's 1900 decision in *Shoshone*, which held that a statute that provided for suit "in a court of competent

jurisdiction" and did not "in express language prescribe either a Federal or a state court" did not provide automatic federal jurisdiction. *Shoshone* explained that Congress does not silently create "new rule[s] of demarcation between the jurisdiction of the Federal and state courts." 177 U.S. at 506. As *Shoshone* reasoned, "[i]f [Congress] had intended that the jurisdiction should be vested only in the Federal courts, it would undoubtedly have said so." *Id.* at 506-07.

Equally unavailing is the Ninth Circuit's third rationale for why the "of competent jurisdiction" language does not preclude its reading of Fannie's charter. Rather than give that phrase meaning, the Ninth Circuit concluded that substituting it for "law or equity" is "best explained as getting rid of [an] anachronism" that remained after the Federal Rules of Civil Procedure merged law and equity in the federal courts in 1938. Pet. App. 10a; *see* Fed. R. Civ. P. 2 ("There is one form of action—the civil action.").

The problem is that the changed language applied equally to "any court ... State or Federal." Although law and equity merged in the *federal* courts, that was not (and even now is not) true in all state courts. T. Leigh Anenson, *Treating Equity Like Law: A Post-Merger Justification of Unclean Hands*, 45 Am. Bus. L.J. 455, 456 n.5, 509 (2008). For similar reasons, the Ninth Circuit's example of Congress's supposed cleanup of "law or equity" throughout the U.S. Code is inapt. The court pointed to a 1948 Act amending some provisions of Title 28, which governs the *federal* judiciary, to replace references to federal suits at law or equity with the phrase "civil actions." *See* Pet. App.

10a (citing Act to Revise, Codify and Enact Into Law Title 28 of the United States Code, Pub. L. No. 80-773, §§ 1332, 1343, 1345-46, 62 Stat. 869, 930-33; H.R. Rep. No. 80-3214, at A115, A121, A123 (1948)). But Congress has amended other sections of the U.S. Code that, like Fannie's charter, speak to suits in *state* court, without removing references to law or equity.[2] Sometimes, Congress has even *added* the phrase "court of law or equity."[3]

Even if the Ninth Circuit were right about Congress's purpose of removing references to "law or equity," that only explains why it deleted that phrase from the charter, not why it replaced it with "of competent jurisdiction." The Ninth Circuit posited that Congress may have thought it needed that phrase to

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[2] *See, e.g.*, 12 U.S.C. § 24 (Federal Banks) (amended in 1949 and 1954, *see* Pub. L. No. 81-142, 63 Stat. 298, 298; Pub L. No. 83-630, ch. 834, § 2, 68 Stat. 770, 771); 12 U.S.C. § 341 (Federal Reserve Banks) (amended in 1994, *see* Pub. L. No. 103-325, § 602g(1), 108 Stat. 2160, 2293); 12 U.S.C § 614 (Corporations to do foreign banking) (amended in 1978, *see* Pub. L. No. 95-369, § 3(c), 92 Stat. 607, 609). Indeed, Congress amended the Red Cross's charter itself in 1947, just one year before the Title 28 amendment cited by the Ninth Circuit. *Red Cross*, 505 U.S. at 251-52. Yet Congress did not remove the phrase "courts of law and equity," which is still in the charter today. 36 U.S.C. § 300105(a)(5).

[3] *See, e.g.*, 12 U.S.C. § 1789 (National Credit Union Administration Board) ("court of law or equity" added in 1970, *see* Pub. L. No. 91-468, § 209(a)(2), 84 Stat. 994, 1014); 12 U.S.C. § 1819 (FDIC) ("court of law or equity" added in 1950, *See* Pub. L. No. 81-797, § 9, 64 Stat. 873, 881); 12 U.S.C. § 2277a-7 (Farm Credit System Insurance Corporation) ("court of law or equity" added in 1988, *see* Pub. L. No. 100-233, § 5.58(4)(A), 101 Stat 1568, 1614).

require otherwise competent state courts to hear claims involving Fannie in light of *Testa v. Katt*, 330 U.S. 386 (1947); Pet. App. 13a. *Testa* held that a Rhode Island court could not refuse to hear a claim brought under the federal Emergency Price Control Act, which authorized suits "in any court of competent jurisdiction." 330 U.S. at 387, 393-94. But that case stands only for the proposition that state courts of otherwise competent jurisdiction cannot refuse on policy grounds to hear suits arising under federal law. *See id.* This Court in no way suggested the state courts' obligation to adjudicate the federal claim turned on the statute's reference to courts "of competent jurisdiction."

2. The 1974 Amendments added a basis for diversity jurisdiction, which would have been unnecessary if federal jurisdiction was automatic in all of Fannie's cases.

If the 1954 amendment left any doubt about Congress's intention, Congress erased it in 1974, confirming that an outside source of jurisdiction is needed. That year, Congress amended Fannie's charter again—this time, to specify that Fannie is "a District of Columbia corporation" for "purposes of jurisdiction and venue." § 806(b), 88 Stat. at 727 (codified as amended at 12 U.S.C. § 1717(a)(2)(B)).

This change clarified Fannie's citizenship for purposes of diversity jurisdiction. *See* Pet. App. 38a (Stein, J., dissenting). Fannie had recently achieved private status, *see* Rehnquist letter, 116 Cong. Rec. at 23,997; under § 1349, the federal courts no longer had

automatic jurisdiction over litigation matters involving Fannie. It was theoretically subject to federal diversity jurisdiction, but its citizenship for such purposes was unclear. Federal law deems a corporation a citizen "of every State ... by which it has been incorporated and of the State ... where it has its principal place of business," 28 U.S.C. § 1332(c)(1), but federally chartered corporations are not "incorporated" in any "State," *see Wachovia Bank v. Schmidt*, 546 U.S. 303, 306 (2006), and Congress wanted to allow Fannie to move its principal office to the suburbs, *see* Subcomm. on Hous. of the Comm. on Banking and Currency, 93d Cong., Compilation of the Housing and Community Development Act of 1974, at 379 (Comm. Print 1974). Further, the growing consensus among courts at the time was that federally chartered corporations were "national" citizens and ineligible for diversity jurisdiction unless their activities were concentrated in a particular state. *See, e.g., FDIC v. Nat'l Sur. Corp.*, 345 F. Supp. 885, 887 (S.D. Iowa 1972) (holding that the FDIC is a national citizen only); Lund, *supra*, at 337-48.

As it did with the charters of several other federally chartered corporations, Congress therefore amended Fannie's charter to clarify that Fannie was eligible for diversity jurisdiction. *See* Lund, *supra*, at 353 (citing amendments to several other charters for purposes of clarifying those entities' citizenship for diversity purposes). The amended charter provides that Fannie is "a District of Columbia corporation," and therefore a District of Columbia citizen under § 1332(c)(1) eligible for diversity jurisdiction. *See* Pet. App. 40a.

This amendment would have been pointless if the federal courts already had automatic jurisdiction via Fannie's charter. As if to prove the point, Congress made no parallel change to Ginnie Mae's charter. Unlike Fannie, Ginnie is a government agency and therefore has "no use for diversity jurisdiction." Pet. App. 39a.

Nevertheless, the Ninth Circuit concluded that when the 1974 amendments used the word "jurisdiction," it clarified Fannie's citizenship only for purposes of personal jurisdiction and not for subject matter jurisdiction. Pet. App. 19a-21a. That argument is unconvincing, and Fannie itself seems to be unpersuaded. It has repeatedly argued—even *after* it filed its supplemental cert-stage opposition in this case—that § 1717(a)(2)(B)'s reference to Fannie as a District of Columbia corporation refers to Fannie's citizenship for purposes of diversity jurisdiction. *See* Notice of Removal at 3-4, *Borunda v. Fannie Mae*, 3:16-cv-204-PRM (W.D. Tex. Jun. 16, 2016), Dkt. 1 ("Fannie Mae is a citizen of the District of Columbia.... *See* 12 U.S.C. § 1717(a)(2)(B).... Complete diversity therefore exists between the Parties."); Notice of Removal at 5, *Carter v. Fed. Nat'l Mortg. Ass'n*, 8:14-cv-1754-CJC-JCG (C.D. Cal. Nov. 3, 2014), Dkt. 1 ("Because Plaintiff is ... a citizen of California and Defendant is ... a citizen of the District of Columbia, complete diversity of citizenship exists ....").

The vast majority, if not all, of the federal courts that have considered the question have concluded that the District of Columbia corporation clause dictates Fannie's citizenship for diversity jurisdiction. *See, e.g.*, *Hargrow v. Wells Fargo Bank N.A.*, 491 F.

App'x 534, 536 (6th Cir. 2012); *Jeong v. Fed. Nat'l Mortg. Ass'n*, No. A-14-CA-920-SS, 2014 WL 5808594, at *2 (W.D. Tex. Nov. 7, 2014); *Fed. Nat'l Mortg. Ass'n v. Davis*, 963 F. Supp. 2d 532, 535 n.2 (E.D. Va. 2013).

Further, Congress has used the same "jurisdiction and venue" language in other statutes where that language "indisputably pertains to the [subject matter] jurisdiction of the courts." *United States v. Miranda*, 780 F.3d 1185, 1196 (D.C. Cir. 2015) (citing 7 U.S.C. § 941; 28 U.S.C. § 1370; 40 U.S.C. § 123). To be sure, "jurisdiction and venue" may refer to personal jurisdiction *in addition* to diversity jurisdiction. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). But if Congress intended to refer only to personal jurisdiction, it would not have used a word that encompasses both personal and subject matter jurisdiction.

The better reading—the one that aligns with the text of Fannie's charter as well as its history—is that the "sue-and-be-sued" clause does not confer subject matter jurisdiction on the federal courts.

II. *Red Cross* Does Not Support Interpreting Fannie's Charter To Confer Jurisdiction.

The Ninth Circuit majority did not start with the plain language of Fannie's sue-and-be-sued clause. It read this Court's opinion in *Red Cross* to require any court construing such a clause to dispense with the traditional approach to statutory interpretation in favor of a talismanic rule that revolves around the word "federal"; if found, then the charter confers jurisdiction, and no further analysis is necessary. Pet. App. 11a. The Ninth Circuit saw this as a "clear rule for

construing sue-and-be-sued clauses for federally chartered corporations," Pet. App. 5a—a rule that "resolves this case," Pet. App. 8a, and presumably any other case about jurisdiction under any charter.

That is wrong. *Red Cross* did not adopt a magic-word test. § II.A. To the contrary, this Court examined various indicia in the text and history of the Red Cross's charter—all of which point in the opposite direction here. § II.B. If, however, this Court concludes that *Red Cross* did adopt a magic-word test, it should overrule that decision. § II.C.

A. Neither *Red Cross* nor other precedents articulated an "if federal, then jurisdiction" rule.

1. Contrary to the Ninth Circuit's opinion, *Red Cross* did not announce an "if federal, then jurisdiction" rule. This Court said that "the rule" it drew from its precedents was that "a congressional charter's 'sue and be sued' provision *may* be read to confer federal court jurisdiction *if, but only if*, it specifically mentions the federal courts." 505 U.S. at 255 (emphasis added). There is a big difference.

Embedded in this formulation are two principles: "[O]nly if" means that a court *may not* read a clause to confer federal jurisdiction unless the phrase "federal court" appears in the text. But "if" the provision "mentions the federal courts," a court "*may*" read it as conferring federal jurisdiction—"may," not must. Here, as in any other exercise in statutory interpretation, the rest of the words in the clause matter. Simply

put, the word "federal" is necessary, but not sufficient, to confer federal jurisdiction.

This rule make sense. The federal courts are courts of limited jurisdiction, having only the jurisdiction that Congress grants them. *Gunn v. Minton*, 133 S. Ct. 1059, 1064 (2013). At minimum, therefore, a sue-and-be-sued clause—which is not the place one would normally look for a jurisdictional provision—cannot confer authority on the federal courts unless it refers to them by name. To hold otherwise would mean that Congress could create federal jurisdiction by accident.

Conversely, the idea that a reference to "federal courts" necessarily translates into federal jurisdiction regardless of the clause's actual wording makes no sense. That is just not how this Court interprets statutes. And it would yield absurd results. Take the hypothetical that Judge Brown of the D.C. Circuit proffered: a charter that reads "Fannie Mae may sue and be sued in federal court *only if* another statute independently confers subject-matter jurisdiction." Under the Ninth Circuit's approach, that charter would have to be read to confer jurisdiction, even though the text unambiguously says just the opposite. *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 795 (D.C. Cir. 2008) (Brown, J., concurring). That obviously cannot be correct. As Judge Brown noted, this hypothetical statute is functionally identical to Fannie's charter, whose plain text requires an independent basis for federal jurisdiction. *Id.* at 799. The Ninth

Circuit's "if federal, then jurisdiction" rule contravenes basic logic, basic statutory construction, and this Court's precedents.

Despite all this, the Ninth Circuit erroneously read *Red Cross* as standing for the rule that "a specific reference to the federal courts [i]s 'necessary *and sufficient* to confer jurisdiction.'" Pet. App. 11a (quoting *Red Cross*, 505 U.S. at 252) (emphasis added). That is not what this Court said in the sentence the Ninth Circuit partially quoted—or anywhere else.

The sentence in question is in the opening paragraph of the legal analysis. 505 U.S. at 252. The paragraph begins, "[W]e do not face a clean slate." *Id.* Next comes the sentence in question, which notes that "we have had several occasions to consider whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party," and observes:

> our readings of those provisions not only represented our best efforts at divining congressional intent retrospectively, but have also placed Congress on prospective notice of the language necessary and sufficient to confer jurisdiction.

Id. That sentence does not say that this Court's precedents stand for the proposition that a simple reference to "federal court" would be "sufficient to confer jurisdiction." The paragraph does not even mention that some of the clauses use the word "federal" or suggest any rule at all (as the opinion later did in the "if,

but only if" sentence). And it certainly did not suggest that the meaning revolves around a single word. To the contrary, the Court talked about using its "best efforts at divining congressional intent." *Id.* And the paragraph concluded, "Those cases therefore require visitation with care." *Id.*

The opinion proceeded to do exactly that. It considered each prior precedent. *Id.* at 252. It did not describe a single one of them as suggesting that the word "federal" is sufficient to confer federal jurisdiction. It then declared the "if, but only if" "rule" quoted above. *Id.* at 255. Even then, this Court proceeded to apply all the traditional tools of statutory construction—assessing the evolution of the clause, *id.* at 263, and evaluating legislative history, *id.* at 261-62. Ultimately, this Court held that the clause in question granted federal jurisdiction largely because Congress chose text that was "in all relevant respects identical to one on which we based a holding of federal jurisdiction just five years before" in *D'Oench*. *Id.* at 257.

Had "federal" carried the talismanic significance the Ninth Circuit attributed to it, *Red Cross* would have been a much shorter opinion.

2. It would have been quite a departure for *Red Cross* to adopt a magic-word approach, since the line of cases it considered supports no such rule. Those decisions stand only for the principle that courts should read sue-and-be-sued clauses using all the normal interpretive tools available, including the provision's plain language, context, and history. Applying those tools, prior to *Red Cross* the Court had only once held

that a sue-and-be-sued clause conferred jurisdiction—back in 1824.

Deveaux. *Red Cross* began its analysis with *Bank of the United States v. Deveaux*, 9 U.S. 61 (1809). Giving the statute in that case its ordinary meaning, the Court held that a grant of power to the Bank of the United States "to sue and be sued ... in courts of record, or any other place whatsoever" did not "enlarge the jurisdiction of any particular court," but instead simply "give[s] a capacity to the corporation to appear, as a corporation, in any court." 9 U.S. at 85-86. The Court further reasoned that the opposite reading was untenable: "If jurisdiction is given by this clause to the federal courts, it is equally given to all courts having original jurisdiction, and for all sums however small they may be." *Id.* at 86.

The Court compared this clause to a different part of the statute, which provided that certain actions against the directors of the Bank "may ... be brought ... in any court of record of the United States." An Act to Incorporate the Subscribers of the Bank of the United States, ch. 10, § 7, 1 Stat. 191, 194 (1791). Unlike the "sue-and-be-sued" clause, the Court viewed this officer provision as conferring jurisdiction. 9 U.S. at 86. But not because it mentioned "any court of record of the United States." Rather, because its authorization of a particular cause of action to be pursued in the federal courts more naturally spoke to their jurisdiction than a provision discussing the Bank's corporate powers. *See id.; Red Cross*, 505 U.S. at 270 (Scalia, J., dissenting). Nowhere did the Court suggest that the reference to federal courts in one provision of the Act but not the other was dispositive. It

was simply one signal that Congress did not intend the sue-and-be-sued clause to confer jurisdiction. *Deveaux*, 9 U.S. at 86.

Osborn. In *Osborn*, the Court returned to a bank charter (the Second Bank), which granted the power "to sue and be sued ... in all State Courts having competent jurisdiction, and in any Circuit Court of the United States." 22 U.S. at 817. In so doing, the charter treated federal courts and state courts differently: To proceed in state court a party needed to point to some other source of "competent jurisdiction." But that condition did not apply to federal courts hearing suits involving the Bank. The Court concluded that this sue-and-be-sued clause conferred subject matter jurisdiction on the federal courts.

Osborn did not apply any magic-word test. Instead, it concluded that the text of the statute as a whole—"[t]hese words"—could "admit of but one interpretation" and "cannot be made plainer by explanation." *Id.* *Osborn* discussed "the contrast developed [in *Deveaux*] between the first bank charter's 'sue-and-be-sued' provision and its provision authorizing suits against bank officers." *Red Cross*, 505 U.S. at 253. But its analysis never turned on a reference (or lack of reference) to federal courts. Rather, the Court stated that the conclusion that the *Deveaux* sue-and-be-sued clause did not confer jurisdiction was merely "*strengthened* by the circumstance that [another] section of the same act" appeared to confer jurisdiction on federal courts. *Osborn*, 22 U.S. at 818 (emphasis added).

In fact, the only categorical statement in *Osborn* about the importance of "federal courts" was that "a general capacity in the Bank to sue, without mentioning the Courts of the Union, *may not* give a right to sue in those Courts." *Id.* at 818 (emphasis added). In other words, as in *Red Cross*, a specific mention of the federal courts is a necessary condition for jurisdiction, not a sufficient one.

Bankers' Trust. The Court next took up a sue-and-be-sued clause nearly a century later in *Bankers' Trust Co. v. Texas & Pacific Railway Co.*, 241 U.S. 295 (1916). The provision at issue gave Texas & Pacific Railway the power "to sue and be sued ... in all courts of law or equity within the United States." *Id.* at 303. The Court did not mention the absence of any reference to federal courts in its analysis. Rather, it again deployed traditional interpretive tools. The Court began its analysis with the clause's "context," and concluded that, if Congress had intended to confer jurisdiction, it "would have expressed that purpose in altogether different words." *Bankers' Trust*, 241 U.S. at 303. The Court also compared the clause before it to the clauses at issue in *Deveaux* and *Osborn*, and concluded that it was closer to the *Deveaux* clause because it reflected both the same "generality" and "natural import." *Id.* at 304.

D'Oench. Though the majority and dissent in *Red Cross* devoted significant attention to *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), that case was not even about jurisdiction—much less about what language in a sue-and-be-sued clause creates jurisdiction. The ultimate question before the Court was whether federal or state substantive law applied. *Id.*

at 455. The passage on which the *Red Cross* Court focused appeared as part of a brief digression about what turned out to be an academic question: whether Missouri or Illinois law might apply, which in turn depended on which state's choice of law rules were applicable. Specifically, at the time, it was unclear which state's choice of law rules applied when (1) a case involved state substantive law *and* (2) federal jurisdiction was not based on diversity. *Id.* at 455-56.

The Court found that the second condition was met, since jurisdiction was not based on diversity. *Id.* at 455. The Court then stated that the plaintiff "br[ought] this suit under an Act of Congress authorizing [the FDIC] to sue and be sued 'in any court of law or equity, State or Federal,'" while noting that the same part of the statute provided that "[a]ll suits of a civil nature at common law or in equity to which the [FDIC] shall be a party shall be deemed to arise under the laws of the United States," *id.* at 455 & n.2. The Court also cited the prior version of § 1349. *Id.* at 456; *see D'Oench, Duhme & Co. v. FDIC*, 117 F.2d 491, 492 (8th Cir. 1941) (also citing 28 U.S.C. § 42). In short, the plaintiff *brought suit* under the charter's sue-and-be-sued clause, but the district court had *jurisdiction* under 28 U.S.C. §§ 1331 and 1349. *See Red Cross*, 505 U.S. at 274 (Scalia, J., dissenting) ("[T]he complaint in *D'Oench, Duhme* expressly predicated jurisdiction on the fact that the action was one 'aris[ing] under the laws of the United States.'"). At a minimum, the Court articulated multiple possible bases for federal jurisdiction over the FDIC's lawsuit.

The Court concluded, however, that it "need not decide" the choice of law question (and hence the jurisdictional question) because the first condition was not met: federal, not state, substantive law was at issue. *Id.* at 456. The issue of Missouri versus Illinois law, the basis for federal jurisdiction, and the meaning of the sue-and-be-sued clause were therefore irrelevant to the question presented. Tellingly, the Court did not discuss *Deveaux*, *Osborn*, or *Bankers' Trust*—something it would certainly have done had the jurisdictional implications of the sue-and-be-sued clause been at issue.

Against this backdrop, it seems highly unlikely that Congress relied on *D'Oench* when it amended the Red Cross's sue-and-be-sued clause in 1947. Congress would not craft a sue-and-be-sued clause in light of ambiguous statements in a case that had nothing to do with such clauses, let alone pick out of that opinion a single word—"federal"—and decide to hinge jurisdiction on that term. The parties in *Red Cross* cited no evidence that Congress has *ever* based a construction of a sue-and-be-sued clause on *D'Oench*—because it never has. And even if Congress was looking at *D'Oench*, it likely would not have used the sue-and-be-sued clause on its own, but the full provision deeming all cases where the FDIC is a party to "to arise under the laws of the United States."

In sum, the entire course of this Court's precedents on sue-and-be-sued clauses belies any talismanic rule that mentioning the word "federal" is enough to grant jurisdiction.

B. The text, context, and history of the Red Cross's charter are materially different from Fannie's.

Treating *Red Cross* as a precedent to be assessed on its own facts, rather than as a command to apply a magic-word test, leads to reversal here. The Red Cross's charter differs from Fannie's in text, context, and evolution.

The most basic distinction between the two charters is the plain language—specifically, that Fannie's charter requires a "court of competent jurisdiction," whereas the Red Cross's does not. Under *Red Cross*'s own reasoning, this difference is key. As indicated above (at 45-47), the linchpin of the Court's decision in *Red Cross* was a comparison between the Red Cross charter and the statute at issue in *D'Oench*. The Red Cross charter grants the power "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Red Cross*, 505 U.S. at 248. In *D'Oench*, the statute at issue likewise granted the FDIC the "power '[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." *D'Oench*, 315 U.S. at 467 n.4 (1942). It was because the two were "in all relevant respects identical" that this Court found federal jurisdiction. *Red Cross*, 505 U.S. at 257.

The language in Fannie's charter, however, is far from identical. In *Red Cross* and *D'Oench*, there could be no argument, as there is here, that Congress chose language that expressly "look[s] to outside sources of jurisdictional authority." *Califano* 430 U.S. at 106

n.6. If Congress in 1954 had been looking to confer jurisdiction on the federal courts by modeling Fannie's sue-and-be-sued clause after the FDIC's (or the Red Cross's), it would not have included the phrase "of competent jurisdiction."

The difference was not lost on the parties in *Red Cross*. Even as it was urging this Court to find federal jurisdiction in its own charter, the Red Cross recognized that the "of competent jurisdiction" language in certain other charters—including Fannie's—"weakens the case for construing th[ose] statute[s] as a grant of original federal jurisdiction." Brief for Petitioner, *Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247 (1992) (No. 91-594), 1992 WL 532904, at *32 n.4 (citing that very same point from *Califano*). It reasoned that the phrase "presuppose[s] that jurisdiction is determined by some body of law other than the sue-and-be-sued clause itself." *Id.*

The statutory context of the respective charters is also different, in that Congress drafted Fannie's charter against a default jurisdictional rule that did not apply (at least not clearly) to the Red Cross. Recall that § 1349 sets the default here because Fannie is a publicly traded corporation. Under § 1349, the federal courts have jurisdiction *only if* the United States owns "more than one-half of [the corporation's] capital stock." With this provision, Congress expressed its strong preference against granting automatic jurisdiction to stock corporations that, like Fannie, are not government-owned. *See supra* 25-27. At a minimum, this default rule casts doubt on the likelihood that Congress would use a sue-and-be-sued clause to achieve the same result it explicitly sought to avoid.

This Court in *Red Cross*, however, did not operate under the same constraint. As the Court observed, it was "unclear" whether § 1349 had any effect because the Red Cross is a "nonstock corporation[]." 505 U.S. at 251. Without a similarly strong indicator of Congress's jurisdictional views to guide it, the Court looked at other indicia to determine whether Congress would have wanted federal courts to have jurisdiction over all claims involving the Red Cross.

Those other indicia related to the evolution of the clause—which pointed one way in *Red Cross* and point the opposite way here. Congress amended the Red Cross's charter in 1947 to add language that made the clause indistinguishable from the one in *D'Oench*, as follows: "the power to sue and be sued in courts of law and equity, ***State or Federal,*** within the jurisdiction of the United States." *Red Cross*, 505 U.S. at 266 (emphasis added). The party opposing federal jurisdiction offered an explanation for this addition that the Court found implausible. *Id.* at 262. That left the Court to choose between (1) the conclusion that Congress added the phrase to grant automatic federal jurisdiction, and (2) the conclusion that Congress made the change for no reason. Invoking the canon "requiring a change in language to be read, if possible, to have some effect," the Court read the provision as granting automatic federal jurisdiction. *Id.* at 263.

Here, both the analysis and the canon point in the opposite direction. In Fannie's case, Congress started with language that was substantially identical to the language in *D'Oench* (and *Red Cross*), but moved *away* from it, in pretty much the same timeframe. The

most compelling explanation for that 1954 change to Fannie's charter is that Congress purposely affirmed that there would be no automatic federal jurisdiction (in keeping with the intention to privatize Fannie over time and let § 1349 govern the jurisdictional tipping point). *See supra* 27-28. The Ninth Circuit's approach reduces the amended charter language to a nullity—against *Red Cross*'s direction.

Plus, here we have an additional amendment, in 1974, also pointing the same way—a factor absent from both *Red Cross* and *D'Oench*.

C. If *Red Cross* did announce an "if federal, then jurisdiction" rule, it should be overruled.

If, despite all this, the Court agrees with the Ninth Circuit that *Red Cross* created an "if federal, then jurisdiction" rule, this Court should overrule that 5-4 decision. As the *Red Cross* dissent explained (and as discussed above, at 39-41), any such "'magic words' jurisprudence" is completely out of sync with how this Court interprets every other sort of statute. 505 U.S. at 265 (Scalia, J., dissenting).

Moreover, as we also explain above (at 42-47), such a rule would be a sharp departure from this Court's precedents. There is a good reason that the rule *Red Cross* actually articulated is that "federal court" is a necessary, but not sufficient, condition for jurisdiction: That is the only hard-and-fast jurisdictional principle embodied in this Court's cases.

Stare decisis typically counsels in favor of preserving precedent, but it is not an "inexorable command," *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), especially in a case like this. The ruling in *Red Cross* does not "govern primary conduct," so "the force of stare decisis is reduced." *Alleyne v. United States*, 133 S. Ct. 2151, 2164 (2013). And given the "confusion" and "anomalous results" that *Red Cross* produces among courts—like the Ninth Circuit in this case—that believe themselves obliged to follow a talismanic rule rather than read the statute's plain language, *see* Pet. 15-21, allowing the decision to stand would undermine the very purpose of stare decisis, *California v. Acevedo*, 500 U.S. 565, 579 (1991). Because eliminating, rather than extending, an "if federal, the jurisdiction" rule would "better preserve the law's coherence," *Citizens United v. FEC*, 558 U.S. 310, 378-79 (2010), this Court should repudiate any such rule.

III. The Canon Of Constitutional Avoidance Counsels In Favor Of Reversal.

The imperative to avoid constitutional difficulty provides an additional reason to construe Fannie's charter to require an independent basis for jurisdiction—and another ground for rejecting *Red Cross*. Interpreting the sue-and-be-sued clause as the Ninth Circuit did raises the thorny question whether Congress actually has the power under Article III to confer jurisdiction on the federal courts over all manner of Fannie suits, however trivial, simply because Fannie is a congressionally chartered corporation. To avoid this problem, the Court should read the statutory text consistently with its plain meaning—as *not* conferring such jurisdiction.

A. Article III authorizes Congress to "extend" the "judicial power" of the United States "to all cases ... arising under ... the laws of the United States." U.S. Const. art. III, § 2. Though broad, Congress's authority is not limitless. *See, e.g., Mesa v. California*, 489 U.S. 121, 136 (1989) (concluding that 28 U.S.C. § 1442(a)—the federal officer removal statute—"cannot independently support Art. III 'arising under' jurisdiction"); *The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443, 451-53 (1852) (Congress's "arising under" power under Article III does not justify a statute granting jurisdiction over vessels on the Great Lakes).

Red Cross concluded that the federal courts' jurisdiction over the Red Cross fell "within Article III's limits." 505 U.S. at 264. In so ruling, this Court relied on *Osborn* for the proposition that Article III's "arising under" jurisdiction "is broad enough to authorize Congress to confer federal-court jurisdiction over actions involving federally chartered corporations." *Id.* The Court observed that it had "consistently reaffirmed" that holding in the years since—each time also relying entirely on *Osborn*—and was "loath" to reconsider the question. *Id.* (citing *Pac. R.R. Removal Cases*, 115 U.S. at 11-14; *In re Dunn*, 212 U.S. 374, 383-84 (1909); *Bankers' Trust*, 241 U.S. at 305-06; *People of Puerto Rico v. Russell & Co., Sucesores S. En. C.*, 288 U.S. 476, 485 (1933)). But there is good reason to question whether the Constitution—and *Osborn* itself—permit Congress to confer jurisdiction over cases involving corporations like Fannie merely because they have a federal charter.

In *Osborn*, this Court held that Congress did not exceed the scope of Article III when it conferred federal jurisdiction in the charter of the Bank of the United States. 22 U.S. at 828. The Court acknowledged that federal law would not provide the rule of decision in the case. *Id.* at 825. Nevertheless, it found the exercise of jurisdiction appropriate. The chain of logic was something of a bootstrap: (1) the Bank was the plaintiff; (2) the Bank had a federal charter; (3) an antecedent issue was whether the Bank had "a right to sue"; and (4) that question, in turn, "depend[ed] on a law of the United States"—i.e., on interpretation of the charter itself. *Id.* at 823-24. Because that question formed "[a]n original ingredient in every cause" involving the Bank, it was sufficient to bring the case within Article III's reach, even if the Bank's capacity to sue was not actually in dispute. *Id.*

Given the likelihood that no actual federal question would be adjudicated in the case, *Osborn* has been understood to stand for the proposition that Article III permits Congress to confer federal jurisdiction over any case "that *might* call for the application of federal law." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 492 (1983) (emphasis added); *see* Martin H. Redish, *Federal Jurisdiction: Tensions in the Allocation of Judicial Power* 86 (2d ed. 1990) (under a literal reading of *Osborn*, "the mere possibility of a federal issue is sufficient to authorize Congress to bring a case into federal court").

As this Court has since acknowledged, this broad view of Congress's power "has been questioned." *Verlinden*, 461 U.S. at 492; *see Russell & Co.*, 288 U.S. at

485 (noting that *Osborn's* "doctrine has not been extended to other classes of cases," and declining to "extend the doctrine now"). As Justice Frankfurter explained 60 years ago, "[t]here is nothing in Article III that affirmatively supports the view that original jurisdiction over cases involving federal questions must extend to every case in which there is the potentiality of appellate jurisdiction." *Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448, 481-82 (1957) (Frankfurter, J., dissenting).

These critiques are well-founded: Allowing Congress to grant jurisdiction over any case presenting a remote possibility of a federal question would read out of the Constitution virtually any limit to the reach of the "arising under" clause. "[I]t is a rare case indeed where a creative attorney (or, for that matter, a creative court or Congress) could not devise a conceivable federal issue." Redish, *supra*, at 86. In fact, the exercise requires little creativity. For example, under the "mere possibility" approach, a plaintiff could insert a potential federal issue into any case simply by asserting that the state law at issue is not preempted by federal law.

B. In light of these critiques, this Court has expressed significant misgivings about reading Article III so expansively. In *Verlinden*, the Court concluded that the constitutionality of Congress's grant of federal jurisdiction in the Foreign Sovereign Immunities Act (FSIA) depended on whether the statute "merely concern[ed] access to the federal courts," or whether it necessarily "involve[d] application of a body of substantive federal law." 461 U.S. at 496-97.

The Court upheld the FSIA's jurisdictional provision, because the statute requires a district court to apply "detailed federal law standards" respecting a foreign sovereign's immunity to suit "[a]t the threshold of every action." *Id.* at 493. Jurisdiction under the FSIA is therefore grounded on more than the "mere speculative possibility that a federal question may arise at some point in the proceeding." *Id.* In short, a suit that "*necessarily* raises questions of substantive federal law *at the very outset* ... 'arises under' federal law" for purposes of Article III. *Id.* (emphasis added); *see Lincoln Mills*, 353 U.S. at 450-51, 457 (the Labor Management Relations Act poses no "constitutional difficulty," because it can be fairly read to "fashion a body of federal law for the enforcement of ... collective bargaining agreements," not "merely give[] federal district courts jurisdiction in controversies that involve labor organizations").

Applying these principles—and the constitutional avoidance canon—this Court in *Mesa* read into a different jurisdictional statute the requirement that a substantive issue of federal law be present at the outset—even though that requirement was not in the text of the statute itself. The law in question was 28 U.S.C § 1442—the federal officer removal statute—which permits "any officer of the United States" sued in state court for action taken "under color of office" to remove the case to federal court. The question before the Court was whether the statute requires that the officer raise a "federal defense" to seek removal, or if it is sufficient that the officer is being sued over "the manner in which he has performed his federal duties." 489 U.S. at 124-25.

Though the removal statute does not speak of a "federal defense," the Court nonetheless held that removal was improper unless the party asserted such a defense. *Id.* at 139. Otherwise, a case to be removed under § 1442 would fail to present the "question[] of substantive federal law" that the Court found constitutionally crucial in *Verlinden*, 461 U.S. at 493; instead, the statute would "'do nothing more than grant jurisdiction over a particular class of cases,'" something the Court's precedents indicated was not within Congress's Article III power, *Mesa*, 489 U.S. at 136 (quoting *Verlinden*, 461 U.S. at 496); *see Genesee Chief*, 53 U.S. (12 How.) at 451 (a statute that "merely confers a new jurisdiction on the district courts" as "its only object and purpose" is not a proper exercise of Article III "arising under" jurisdiction). By reading a "federal defense" requirement into the statute—and ensuring that an actual issue of federal law was present in the case—the Court avoided "rais[ing] serious doubt" as to whether Congress's enactment "expand[ed] the jurisdiction of the federal courts beyond the bounds established by the Constitution." *Mesa*, 489 U.S. at 136 (internal quotation marks omitted).

C. To avoid similarly "grave constitutional problems," *id.* at 137, this Court should decline to read the sue-and-be-sued clause in Fannie's charter as conferring federal jurisdiction over all cases to which Fannie is a party. This Court has "consistently attached [importance] to interpreting statutes to avoid deciding difficult constitutional questions where the text fairly admits of a less problematic construction." *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 455 (1989); *see Crowell v. Benson*, 285 U.S. 22, 62 (1932).

That principle counsels reversal of the Ninth Circuit here. Like the removal statute in *Mesa*, if Fannie's charter grants jurisdiction at all, it "'does nothing more than grant jurisdiction over a particular class of cases,'" 489 U.S. at 136 (quoting *Verlinden*, 461 U.S. at 496); it does not "involve application of a body of substantive federal law," *Verlinden*, 461 U.S. at 496-97. In *Mesa* that fact was enough to compel the Court to read into § 1442 a statutory requirement not expressed in the text; here it merely gives the Court another reason to read Fannie's sue-and-be-sued clause in accord with the clause's plain meaning.[4]

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[4] Although commentators tend to read *Osborn* broadly, when considered in historical context it is consistent with a narrower view of Article III's reach. *Osborn* speaks in terms of whether a "cause of action" has a federal "ingredient," a term that had a specific meaning at the time. *See* Anthony J. Bellia Jr., *Article III and the Cause of Action*, 89 Iowa L. Rev. 777, 853 (2004). It was "something a plaintiff had to plead or prove to succeed regardless of whether the matter was disputed." *Id.* Courts generally considered "the fact of incorporation" as "part of the right or title of any corporation in a lawsuit." *Id.* at 805. Accordingly, in 1824 a corporation generally had to "aver or prove the fact of incorporation as part of its cause, regardless of whether that fact was contested." *Id.* Because in *Osborn* a key "ingredient"—the fact of incorporation—turned on an interpretation of a federal statute (the Bank's charter), the case arose under the laws of the United States. 22 U.S. at 823.

Cases brought now under federal charters like Fannie's no longer present such issues. Under modern pleading rules, a party's corporate status need not be pleaded "[a]t the threshold." *See* Fed. R. Civ. P. 9(a) ("[A] pleading need not allege ... a party's capacity to sue or be sued."); Ariz. R. Civ. P. 9(a); Fla. R. Civ. P. 1.120(a); Me. R. Civ. P. 9(a); Wash. R. Civ. Ltd. Juris. 9(a). As a

Rejecting the argument that the mere fact of federal incorporation is sufficient for Article III purposes also helps avoid constitutionally absurd results. If a congressional charter alone justifies the exercise of federal jurisdiction, nothing in the Constitution prohibits Congress from extending jurisdiction to all such entities, no matter how remote they are from the activities of the federal government.

Take for example, Little League Baseball, whose purposes include "using the disciplines of the native American game of baseball, to teach spirit and competitive will to win, physical fitness through individual sacrifice, the values of team play, and wholesome well being through healthy social association with other youngsters under proper leadership." 36 U.S.C. § 130502. If a coach snubs a benchwarmer's request to be the starting pitcher, Congress can make a federal case out of it. Or consider the Society of American Florists and Ornamental Horticulturists, whose purpose is to "educate members of the florist industry and the public, and to promote scientific development, in floriculture and horticulture." 36 U.S.C. § 200102. A dispute over a late shipment of manure could also be brought in federal court if Congress so provided. As these examples illustrate, it would be highly questionable for Congress to extend Article III jurisdiction over all state law cases in which either of these entities is a party.

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result, the question of federal incorporation is no longer an "ingredient" of a "cause" in the *Osborn* sense, and the mere fact that a party to a lawsuit has been chartered by Congress is not sufficient to sustain a grant of jurisdiction under Article III.

Given the serious constitutional questions such a decision would raise, the Court should instead read Fannie's charter according to its plain meaning, and hold that it does not confer subject matter jurisdiction on the federal courts over all civil actions to which Fannie Mae is a party.

CONCLUSION

The Court should reverse the decision of the Ninth Circuit.

Respectfully submitted,

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

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IN THE
Supreme Court of the United States

CRYSTAL LIGHTFOOT, ET AL.,
Petitioners,

v.

CENDANT MORTGAGE CORPORATION,
DBA PHH MORTGAGE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT FANNIE MAE

BRIAN P. BROOKS
JULIE E. KATZMAN
MAI PHAM ROBERTSON
FANNIE MAE
3900 Wisconsin Ave., N.W.
Washington, D.C. 20016

JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036

Attorneys for Respondent Fannie Mae

QUESTION PRESENTED

Respondent Fannie Mae is a federally chartered corporation. In *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), this Court construed precedents dating back two centuries as establishing a "basic rule" of construction concerning the jurisdictional effects of a "sue and be sued" provision in a federal corporation's charter. *Id.* at 253. Under that rule, when the provision specifically authorizes the organization to "sue and be sued *in federal courts*," the provision "extends beyond a mere grant of general corporate capacity to sue" and affirmatively "confer[s] federal jurisdiction" over suits by and against the organization. *Id.* at 257 (emphasis added).

The questions presented are:

1. Whether Fannie Mae's corporate charter authorizing it "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal," 12 U.S.C. § 1723a(a), grants federal district courts jurisdiction over suits brought by or against Fannie Mae.

2. Whether *Red Cross* should be overruled.

PARTIES TO THE PROCEEDING

Petitioners are Crystal Lightfoot and Beverly Hollis-Arrington, plaintiffs-appellants below.

The principal respondent and defendant-appellee below is Fannie Mae, also known as the Federal National Mortgage Association. The other respondents are Cendant Mortgage Corporation (doing business as PHH Mortgage), Attorneys Equity National Corporation, and Robert O. Matthews, who were defendants below, but did not participate in the briefing or argument of the jurisdictional question presented here.

RULE 29.6 STATEMENT

Fannie Mae is a publicly traded corporation chartered by the U.S. Congress. It is under the conservatorship of the Federal Housing Finance Agency pursuant to 12 U.S.C. § 4617(a)(1)-(2). It has no parent company, subsidiary, or affiliate that has outstanding securities in the hands of the public, and no publicly held corporation owns in excess of ten percent of its outstanding common stock.

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INTRODUCTION

The Federal National Mortgage Association—Fannie Mae—is a government sponsored enterprise ("GSE") chartered by Congress to effectuate national housing policy. When Fannie Mae was established in 1938, Congress authorized it to sue and be sued "in any court of law or equity, State or Federal." That language conferred jurisdiction on federal courts in all suits by and against Fannie Mae because it expressly authorized Fannie Mae to sue and be sued in federal courts, as confirmed by precedents of this Court dating back more than two centuries. *See Am. Nat'l Red Cross v. S.G.*, 505 U.S. 247, 257 (1992); *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824); *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 85-86 (1809).

In 1954, Congress re-chartered Fannie Mae as part of a broader overhaul of federal housing law. Among many other charter revisions, Congress modified the sue-and-sued clause in Fannie Mae's charter to its current form, retaining the critical jurisdiction-conferring reference to suit in "State or Federal" courts. At the same time, however, Congress deleted that reference from the sue-and-be-sued clause of another federal agency—the Federal Savings & Loan Insurance Corporation ("FSLIC")—whose charter it revised in the same 1954 Act.

In 1970, Congress chartered a second housing GSE, the Federal Home Loan Mortgage Corporation—Freddie Mac—with the same public purposes, same statutory powers, and same special relationship with the federal government as Fannie Mae.

Congress also unambiguously conferred federal jurisdiction in all cases involving that GSE.

Against this history of statutory development, this case presents the single question whether Congress intended to strip the original jurisdictional grant out of Fannie Mae's charter in 1954. Petitioners' theory is that by replacing the phrase "court of law or equity, State or Federal" with "court of competent jurisdiction, State or Federal," Congress intended to limit suits by and against Fannie Mae to courts with an independent basis for subject-matter jurisdiction over the suit. That theory is wrong for multiple reasons.

To start, petitioners cannot adequately explain either significant textual feature of the 1954 amendment: its *retention* of the phrase "State or Federal," or its *addition* of the phrase "court of competent jurisdiction." If Congress wanted to eliminate the jurisdictional grant, it needed only to delete the specific reference to suit in "State *or Federal*" courts—just as it did in amending FSLIC's sue-and-be-sued clause in the same 1954 Act. Yet under petitioners' theory, Congress simply left the phrase in Fannie Mae's charter with the intention that it do no work.

Nor does petitioners' theory plausibly account for Congress's addition of the phrase "court of competent jurisdiction." Petitioners' principal contention is that the phrase "court of competent jurisdiction" necessarily refers to a court with independent subject-matter jurisdiction. It does not. As this Court and others have consistently recognized, Congress often uses the phrase "of competent jurisdiction" in

jurisdiction-conferring provisions, where it operates to identify *which* federal courts may hear the action. Indeed, appellate decisions in the 1940s had construed the very same language Congress later used in Fannie Mae's 1954 sue-and-be-sued clause as jurisdiction-conferring language. As that and every other contextual indicator shows, the authorization to sue and be sued "in any court of competent jurisdiction, State or Federal" does not require an independent basis for subject-matter jurisdiction, but ensures that suit is brought in the appropriate federal court.

Petitioners' policy explanation for the phrase "court of competent jurisdiction"—their "path to privatization" theory—is also based on false premises. According to petitioners, Congress added the phrase in the 1954 Act so that when the government's ownership interest in Fannie Mae eventually fell below 50%, there would no longer be "automatic" federal jurisdiction for suits involving Fannie Mae under 28 U.S.C. § 1349, and Fannie Mae would be on equal footing with other private entities. The first problem with that theory is that the 1954 Act also provided that Fannie Mae would *remain* a government agency, even if the government no longer owned a majority of its capital stock. The second problem is that the theory wrongly assumes that Congress would have wanted a privately-owned GSE like Fannie Mae to be treated like any other private entity. But when Congress in 1970 established Fannie Mae's privately-owned sister GSE, Freddie Mac, Congress made clear that suits involving that GSE would be subject to federal jurisdiction. There is no policy or historical basis for inferring that Congress wanted

the federal interests implicated by suits involving Freddie Mac to be protected by federal courts, but did not want the same for the identical interests implicated by suits involving Fannie Mae.

To the contrary, the text and context of Fannie Mae's sue-and-be-sued clause make clear that Congress has always intended the clause to be a grant of federal court jurisdiction over suits involving Fannie Mae. The 1954 Act did not change the clause's jurisdictional character, but confirmed it, by retaining the authorization of suit specifically in federal court, while adding a familiar phrase understood as identifying the appropriate federal courts for suit. That construction makes perfect sense of every word in the provision, every other amendment to the charter, and every policy interest underlying Fannie Mae's function. The judgment below should be affirmed.

STATEMENT OF THE CASE

A. Statutory And Regulatory Background

1. *Fannie Mae's Original Charter*

Fannie Mae fulfills the "important public mission[]" (12 U.S.C. § 4501(1)) of promoting a vibrant secondary mortgage market and making home ownership more accessible for low and middle-income Americans. *See id.* § 1716 et seq.

Fannie Mae was created in 1938 by the Reconstruction Finance Corporation, a New Deal-era federal corporation, pursuant to authority granted in Title III of the National Housing Act of 1934 ("NHA"), Pub. L. No. 73-479, 48 Stat. 1246, as amended by the National Housing Act Amendments of 1938, Pub. L. No. 75-424, § 4, 52 Stat. 23. *See*

Richard W. Bartke, *Fannie Mae and the Secondary Mortgage Market*, 66 Nw. U. L. Rev. 1, 18-19 (1971-1972). Fannie Mae was empowered under § 301(c) of the NHA to "sue and be sued, complain and defend, in any court of law or equity, State or Federal." 48 Stat. 1253.

In 1948, Congress for the first time expressly authorized Fannie Mae as a subsidiary of the Reconstruction Finance Corporation. Act of July 1, 1948, Pub. L. No. 80-864, 62 Stat. 1206. Title III of the NHA became the statutory charter for Fannie Mae and, among other things, continued to empower Fannie Mae "to sue and be sued, complain and defend, in any court of law or equity, State or Federal." 62 Stat. 1208.

There were at the time multiple bases for federal jurisdiction over suits by or against Fannie Mae. *First*, suits by or against federally-chartered corporations majority-owned by the government were deemed to "arise under" federal law. *See* 28 U.S.C. § 1349 (1948); *Fed. Intermediate Credit Bank of Columbia, S.C. v. Mitchell*, 277 U.S. 213, 215 (1928). But jurisdiction on that basis attached only to suits satisfying the then-extant amount-in-controversy requirement of 28 U.S.C. § 1331 (1948). *See Mitchell*, 277 U.S. at 215; *Hood ex rel. N.C. Bank & Trust Co. v. Bell*, 84 F.2d 136, 137 (4th Cir. 1936). *Second*, Fannie Mae was an agency of the United States, 28 U.S.C. § 451 (1948), so it could bring any suit in federal court, *id.* § 1345, and remove to federal court any suit brought against it in state court, *id.* § 1442(a). *Third*, a clause (like Fannie Mae's) authorizing an entity to sue and be sued "in any court of law or equity, State *or Federal*," conferred federal

jurisdiction over *all* suits by or against the entity. *See Red Cross*, 505 U.S. at 257; *D'Oench, Duhme & Co. v. Fed. Deposit Ins. Corp.*, 315 U.S. 447, 455 (1942).

2. *The 1954 Act*

a. As part of a larger restructuring of federal housing-related authorities, Congress in 1954 re-chartered and reorganized Fannie Mae by amending Title III of the NHA. Housing Act of 1954 ("1954 Act"), Pub. L. No. 83-560, 68 Stat. 590. The 1954 Act established Fannie Mae as a "constituent agency of the Housing and Home Finance Agency"—later, the Department of Housing and Urban Development ("HUD")—and provided that it "shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof." *Id.* [§ 302(a)],[1] 68 Stat. 613.

The newly re-chartered entity was governed by a 5-person Board of Directors made up of government officials. *Id.* [§ 308(a)], 68 Stat. 620. In light of the 1954 Act, Fannie Mae was deemed by Congress a "wholly owned Government corporation," 31 U.S.C. § 846 (1964), and its "employees were government personnel within [HUD], and therefore were covered by civil service requirements and retirement laws," *Northrip v. Fed. Nat'l Mortgage Ass'n*, 527 F.2d 23, 31 (6th Cir. 1975) (describing Fannie Mae under 1954 Act).

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[1] Section 201 of the 1954 Act amended Title III of the NHA by repealing the prior Title III and enacting a new one. 68 Stat. 612-22. Bracketed section citations refer to the section number of the newly enacted version of Title III of the NHA.

The 1954 charter divided Fannie Mae's operations into three different functions. Two of those functions—"provid[ing] special assistance" for certain types of mortgage financing and "manag[ing] and liquidat[ing]" Fannie Mae's existing mortgage portfolio, 1954 Act [§ 301], 68 Stat. 612-13—were understood as wholly governmental, and were to be financed entirely with public capital. *See id.* [§ 307(b)], 68 Stat. 619.

The third function was to "provide supplementary assistance to the secondary market for home mortgages." *Id.* [§ 301], 68 Stat. 612. Those secondary-market operations were intended to be financed with a mix of federal and private capital. *See id.* [§ 307(b)], 68 Stat. 619. The secondary-market function was initially financed with a purchase of non-voting preferred stock by the Treasury Department. *Id.* [§ 303(a)], 68 Stat. 613-14. That stock was meant to be retired through an anticipated influx of private capital—any mortgage seller was required to purchase non-voting common stock as a prerequisite to selling the mortgage to Fannie Mae. *Id.* [§ 303(b), (c)], 68 Stat. 614.

b. The 1954 Act also changed the charter's original jurisdictional clause authorizing suits by and against Fannie Mae "in any court of law or equity, State or Federal." The amendment retained the specific reference to suit in "State or Federal" court, but replaced the phrase "court of law or equity" with the phrase "court of competent jurisdiction," so the clause now authorized suit "in any court of competent jurisdiction, State or Federal." *Id.* [§ 309(a)], 68 Stat. 620. As the government recognizes (SG Br. 2-3), Congress borrowed the new language from anoth-

er NHA provision authorizing suit by and against the Federal Housing Administration ("FHA") "in any court of competent jurisdiction, State or Federal." Banking Act of 1935, Pub. L. No. 74-305, § 344(a), 49 Stat. 722 (amending Title I of the NHA).

The FHA language had been construed in the 1940s by the Fourth and Third Circuits as conferring jurisdiction on district courts over suits by and against the FHA and thereby avoiding the exclusive jurisdiction of the Court of Claims over certain suits against the FHA. *See Ferguson v. Union Nat'l Bank of Clarksburg, W. Va.*, 126 F.2d 753, 756 (4th Cir. 1942); *George H. Evans & Co. v. United States*, 169 F.2d 500, 502 (3d Cir. 1948). The government, too, has agreed that the FHA language—now codified at 12 U.S.C. § 1702—"plainly" confers jurisdiction. Brief for the Respondents in Opposition at 9 & n.6, *Portsmouth Redevelopment and Housing Auth. v. Pierce* (U.S. No. 83-90) ("by authorizing suit 'in any court of competent jurisdiction, State or Federal,'" the FHA language "[p]lainly ... provides a basis for district court jurisdiction" (citing *Ferguson*)).

c. In the same 1954 Act, Congress also amended FSLIC's sue-and-be-sued clause. Before 1954, Congress conferred federal jurisdiction over suits by and against FSLIC by authorizing such suits "in any court of law or equity, State or Federal." NHA § 402(c)(4), 48 Stat. 1256; *see supra* at 5-6. As with Fannie Mae, Congress replaced the phrase "court of law or equity" in the FSLIC charter with the phrase "court of competent jurisdiction." 68 Stat. 633. But unlike with Fannie Mae, Congress *deleted* the reference to suit in "State or Federal" courts, instead substituting language authorizing suits by and against

FSLIC "in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico." *Id.*

d. Petitioners incorrectly assert (Petr. Br. 9) that the 1954 amendment to Fannie Mae's sue-and-be-sued clause would make Fannie Mae subject to the same jurisdictional rules as private entities, once the expected elimination of majority public ownership was complete. To the contrary, under the 1954 Act, Fannie Mae would remain a government agency (within the agency that would later become HUD), even after Treasury's preferred stock was retired, unless and until both the executive and legislative branches took further action to privatize Fannie Mae's secondary market operations. 1954 Act § 303(g), 68 Stat. 615. Accordingly, even though suits by and against Fannie Mae under § 1349 no longer would be available once more than half of its capital stock became privately owned, federal courts still would have jurisdiction over any suit brought by Fannie Mae under 28 U.S.C. § 1345 (1948). And Fannie Mae likewise could remove to federal court any state-court suit brought against it under the federal-agency removal statute. 28 U.S.C. § 1442(a) (1948).

3. *The 1968 Amendment*

Section 303(g) of the 1954 charter provided that new legislation would be necessary to transfer Fannie Mae's secondary-market operations to private investors once Treasury's preferred stock had been redeemed. In 1968, Treasury was still Fannie Mae's majority capital holder. *See* H.R. Rep. No. 90-1585, 1968 U.S.C.C.A.N. 2873, at 2943. The 1968 Con-

gress nevertheless enacted the legislation contemplated in 1954 and re-chartered Fannie Mae as a privately owned, *government-sponsored* corporation. Housing and Urban Development Act of 1968 ("1968 Act"), Pub. L. No. 90-448, Title VII, 82 Stat. 536-46. Fannie Mae's separate, purely governmental functions were transferred to a new entity, the Government National Mortgage Association (Ginnie Mae), which would "remain in the Government." *Id.* § 801, 82 Stat. 536. Congress achieved this division of authority by amending Fannie Mae's charter to apply certain provisions only to Fannie Mae, certain other provisions only to Ginnie Mae, and certain provisions to both of them. *See* 12 U.S.C. § 1716 et seq.

The 1968 amendments did not alter the sue-and-be-sued clause, which remains unchanged to this day, shared by Fannie Mae and Ginnie Mae. 12 U.S.C. § 1723a(a).

Notwithstanding these changes to its structure, Fannie Mae retained its uniquely federal character. It remained the "Federal" National Mortgage Association, with the same public purposes established in 1954. Under the 1968 Act, the President appointed five of Fannie Mae's 15 directors, and could remove any director for cause. 1968 Act § 802(y)(7), 82 Stat. 539. The 1968 Act also gave Fannie Mae an exemption from State taxation, *id.* § 802(aa)(4), 82 Stat. 540, and other perquisites of government sponsorship that it retains to this day, *see, e.g., id.* §§ 802(dd), 802(z)(3), 804(a) 82 Stat. 541, 542. The HUD Secretary was vested with "general regulatory power" over Fannie Mae, and empowered to (among other things) make rules and regulations to ensure

"that the purposes of [the NHA] are accomplished," *id.* § 802(ee), 82 Stat. 541.

4. *Freddie Mac's 1970 Charter*

In 1970, Congress established the Federal Home Loan Mortgage Corporation ("Freddie Mac") "as a private corporation to compete with Fannie Mae." *Montgomery Cty., Md. v. Fed. Nat'l Mortg. Ass'n*, 740 F.3d 914, 918 (4th Cir. 2014). The "two companies are virtually identical," *DeKalb Cty. v. Fed. Hous. Fin. Agency*, 741 F.3d 795 (7th Cir. 2013)—they both "carry out their missions by purchasing mortgages originated by third-party lenders, pooling the mortgages into investment instruments, and selling those mortgage-backed securities to raise capital for further purchases," *Montgomery Cty.*, 740 F.3d at 918. Freddie Mac was originally owned by the Federal Home Loan Banks, *see* Emergency Home Finance Act of 1970, Pub. L. No. 91-351, § 303(a), 84 Stat. 452, and became a publicly-traded company in 1989, *see* Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, § 731(c)(2), 103 Stat. 430, 432.

Because Congress was starting with a clean slate, Freddie Mac's charter used different language and organization from Fannie Mae's, *compare* 12 U.S.C. § 1716 et seq. (Fannie Mae charter), *with id.* § 1451 et seq. (Freddie Mac charter), but the substance of the two entities' authorities are understood to be "almost identical." Julia Patterson Forrester, *Fannie Mae/Freddie Mac Uniform Mortgage Instruments: The Forgotten Benefit to Homeowners*, 72 Mo. L. Rev. 1077, 1082 (2007) (hereinafter Forrester, *Forgotten Benefit*). As both the House and Senate reports ac-

companying Freddie Mac's charter legislation explained, Congress "intended to provide [Fannie Mae] and [Freddie Mac] with the same purchasing authority and limitations so there can be a parallel development of these institutions and so neither would have any competitive advantage over the other." S. Rep. No. 91-761, 1970 U.S.C.C.A.N. 3488 at 3494; H.R. Rep. No. 91-1311 (1970), at 7. The policy parallel includes litigation—as with Fannie Mae, Congress granted federal jurisdiction over suits by or against Freddie Mac, albeit using different language. 12 U.S.C. § 1452(c), (f); *see infra* at 52-53.

5. *The 1974 Amendment*

In 1974, Congress granted Fannie Mae the authority to move its headquarters outside the District of Columbia, authorizing it to be headquartered in the District "or the metropolitan area thereof." 12 U.S.C. § 1717(a)(2)(B). The same amendment provided that Fannie Mae would remain a D.C. corporation "for purposes of jurisdiction and venue in civil actions," no matter where it moved its headquarters. *Id.* This amendment ensured that Fannie Mae would be considered "at home" in the District for purposes of general personal jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).

6. *Fannie Mae's And Freddie Mac's Uniquely Federal Mission*

Congress has expressly affirmed both Fannie Mae's and Freddie Mac's "important public missions" "reflected in the statutes and charter Acts establishing" them, and that their "continued ability ... to accomplish their public missions is important to providing housing in the United States and the

health of the Nation's economy." 12 U.S.C. § 4501(1), (2). While recognizing their nature as privately owned companies, Congress has made clear that Fannie Mae and Freddie Mac have "an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return." *Id.* § 4501(7); *see also* 12 U.S.C. § 1716 (Fannie Mae charter statement of purpose); 12 U.S.C. § 1451 note (same for Freddie Mac).

B. Factual Background And Proceedings Below

1. Petitioners either individually or together have filed a total of four federal actions related to this case—two in the Central District of California, one in the District of Columbia, and one in the District of New Jersey—each of which was dismissed either on the merits or on res judicata grounds. *See Hollis-Arrington v. PHH Mortg. Corp.*, 2005 WL 3077853, at *1 (D.N.J. Nov. 15, 2005) (describing actions); *Hollis-Arrington v. PHH Mortg. Corp.*, 205 F. App'x 48, 55 (3d Cir. 2006) (per curiam).

Most relevant here, petitioner Hollis-Arrington filed in June 2001 a federal action in the Central District of California against Cendant Mortgage Corporation (which financed her mortgage), Fannie Mae (which had purchased the mortgage on the secondary market), and Attorneys Equity National Corporation (which had become the property's trustee). That action alleged Cendant and Fannie Mae "violated the Racketeer Influenced and Corrupt Organi-

zations Act ('RICO'), 18 U.S.C. §§ 1962(c) and (d), and federal lending laws by conspiring to issue mortgage loans to unqualified borrowers so that Cendant could acquire the properties by foreclosure." *Hollis-Arrington v. Cendant Mortg. Corp.*, 61 F. App'x 463, 463 (9th Cir. 2003). The district court dismissed the case, and the Ninth Circuit affirmed. *Id.*

2. In 2002, after the Central District of California's dismissal of the action described in the previous paragraph, petitioners together filed this action in California state court. They sued the same parties Hollis-Arrington had sued in the federal action, and made the same allegations of a conspiracy to make loans to non-creditworthy borrowers. JA 27-58.

Fannie Mae removed the case to federal district court, and petitioners unsuccessfully moved to remand to state court. The district court thereafter dismissed the action on res judicata grounds and subsequently denied petitioners' motion to set aside the judgment under Rule 60(b). JA 19, JA 23-24.

The Ninth Circuit affirmed. JA 114-15. Following a petition for rehearing, however, the court of appeals sua sponte withdrew its earlier memorandum disposition. JA 116-18. The court appointed counsel for petitioners and directed the parties to file new briefs addressing, *inter alia*, "whether the district court had subject matter jurisdiction on the basis of the federal charter of [Fannie Mae]." JA 118.

3. After new briefing and argument, the court of appeals agreed with the D.C. Circuit in *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust ex*

rel. Federal National Mortgage Ass'n v. Raines, 534 F.3d 779 (D.C. Cir. 2008), that Fannie Mae's sue-and-be-sued clause "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a; *see also Fed. Home Loan Bank of Boston v. Moody's Corp.*, 821 F.3d 102, 109 (1st Cir. 2016). The court explained that in *Red Cross*, this Court applied "a line of cases, stretching back to *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824)" (Pet. App. 6a), establishing that when "federal charters ... 'expressly authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction'" (*id.* at 7a-8a (quoting *Red Cross*, 505 U.S. at 257)). Under that longstanding rule, the court held, Fannie Mae's charter confers jurisdiction by authorizing suit by and against Fannie Mae in any federal court of competent jurisdiction. The "of competent jurisdiction" phrase does not require a separate basis for subject-matter jurisdiction, the court explained, but instead enforces other jurisdictional requirements, including personal jurisdiction and specialized subject-matter jurisdiction. *Id.* at 12a-14a.

District Judge Stein, sitting by designation, dissented. He agreed that Fannie Mae's sue-and-be-sued clause would confer jurisdiction on federal courts but for the phrase "of competent jurisdiction." *Id.* at 26a. According to Judge Stein, the addition of that phrase in 1954 stripped the provision of its jurisdiction-conferring force (*id.* at 32a-33a), a result confirmed in his view by a subsequent amendment to the charter history (*id.* at 33a-40a).

4. The Ninth Circuit denied petitioners' petition for rehearing en banc without dissent from any active judge. *Id.* at 1a-2a.

SUMMARY OF ARGUMENT

I. A. Under the rule first recognized in *Deveaux*, applied in *Osborn*, and reaffirmed by this Court most recently in *Red Cross*, Congress confers federal jurisdiction over suits by and against federally chartered entities by authorizing them to sue and be sued specifically in federal courts. As a matter of statutory stare decisis, the *Deveaux-Osborn-Red Cross* rule is now amply justified by its own long pedigree. It is also consistent with recognized principles of statutory construction. *First*, the Court's precedents on the issue have given full meaning to every word in a sue-or-be-sued clause, which would have no need to refer specifically to federal courts if it were only addressing general capacity to litigate. *Second*, the Court has recognized that Congress legislates against the backdrop of prior decisions and has enacted charter provisions expecting that an authorization to sue and be sued specifically in federal courts would suffice to establish federal jurisdiction.

B. Petitioners both underread and overread the *Deveaux-Osborn-Red Cross* rule. Authorization to litigate specifically in federal court is not simply one factor "relevant" to the jurisdictional question—it is virtually dispositive. But the rule also does not mean that jurisdiction would be created even by the caricature provision petitioners posit, *viz.*, a statute that mentions federal courts only in an express statement *denying* them jurisdiction.

C. Petitioners contend that *Red Cross* (and, implicitly, its many progenitors) should be overruled, but only if it represents the false caricature they describe. Because it does not, there is no basis for now reading sue-and-be-sued clauses differently from how this Court's decisions have read them for two hundred years. Those decisions are correct, and principles of statutory stare decisis would compel adherence to them in any event.

II. Fannie Mae's sue-and-be-sued clause confers federal jurisdiction under the *Deveaux-Osborn-Red Cross* rule by specifically authorizing suit in federal courts of competent jurisdiction.

A. Fannie Mae's original charter provision was materially identical to Red Cross's provision and thus conferred jurisdiction by authorizing suits by and against Fannie Mae "in any court if law or equity, State or Federal."

B. Congress did not eliminate the jurisdiction-conferring force of that clause by amending it in 1954 to authorize suits by and against Fannie Mae "in any court of competent jurisdiction, State or Federal."

1. Petitioners' reading of the sue-and-be-sued clause impermissibly renders the words "State or Federal" superfluous. By contrast, Fannie Mae's reading gives meaning to every term in the provision.

2. Petitioners' reading also rests on a false premise about the meaning of "court of competent jurisdiction." Their entire argument assumes that the phrase necessarily refers to a court with *subject-matter* jurisdiction. But Congress has routinely con-

ferred subject-matter jurisdiction—before and since 1954—by authorizing suit specifically in federal courts "of competent jurisdiction." Those statutes cannot be reconciled with petitioners' understanding of the phrase.

3. In fact, two federal appellate decisions contemporaneous with the 1954 amendment to Fannie Mae's charter had construed the FHA's sue-and-be-sued clause—which, like Fannie Mae's charter, appeared in the NHA, and authorized suit "in any court of competent jurisdiction, State or Federal"—as conferring subject-matter jurisdiction on the district courts. When Congress used the same FHA language in amending Fannie Mae's charter, it would reasonably have expected Fannie Mae's provision to be construed the same way.

4. As in other jurisdiction-conferring provisions, Congress's use of the phrase "court of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause is not surplusage, because it has legal effects other than requiring suit in a court with independent subject-matter jurisdiction. As this Court held just before the 1954 Act was adopted, this language requires suit in a court that has personal jurisdiction. The same language in the FHA statute also had been construed as conferring jurisdiction while avoiding exclusive jurisdiction in the Court of Claims, an issue that could have arisen for Fannie Mae as well. And the language ensured that venue would remain in D.C. federal court, resolving a potential ambiguity created by a separate venue-related provision in the 1954 Act.

5. Petitioners' theory of the 1954 amendment, by contrast, fails to provide a plausible account of its legal effect. Under their theory, Congress expected Fannie Mae to lose access to federal courts under § 1349 once its level of government ownership dropped below 50%. By amending the sue-and-be-sued clause, petitioners hypothesize, Congress ensured that Fannie Mae at that point would be on equal footing with private corporations. The problem with that theory is that Fannie Mae remained a federal agency under the 1954 Act regardless of the government's capital position, and thus continued to have access to federal courts. *See* 28 U.S.C. §§ 1345 (federal-agency suit), 1442(a) (federal-agency removal). The amendment to the sue-and-be-sued clause could not have been intended to put Fannie Mae on equal footing with private corporations.

6. Finally, the meaning of the 1954 amendment to Fannie Mae's sue-and-be-sued clause is confirmed by amendments to two *other* sue-and-be-sued clauses in the same 1954 Act. Most notably, the Act amended the FSLIC sue-and-be-sued clause by deleting the reference to *federal* court, and replacing the provision with the *general* capacity-to-sue language this Court had previously held *not* to confer jurisdiction. The only explanation for deleting the word "federal" from FSLIC's provision was to deprive it of its jurisdiction-conferring force. Congress's decision not to amend Fannie Mae's provision the same way, but instead to retain the specific authorization for suit in *federal* court, confirms that Congress did not intend to eliminate the provision's jurisdiction-conferring force.

C. Petitioners' construction of Fannie Mae's charter is not only wrong on its own terms, but it cannot be squared with Fannie Mae's unique federal purpose, which was not altered when Fannie Mae became a privately owned GSE as a result of the 1968 Act. And petitioners' reading would place Fannie Mae in a less favorable position in terms of access to federal court than Freddie Mac, another private, government sponsored enterprise crucial to federal housing policy, even though Congress explicitly intended the two GSEs to have the same powers and obligations so that neither would have a competitive advantage over the other. Petitioners do not and cannot identify any policy reason Congress would have wanted Freddie Mac to have greater access to federal courts than Fannie Mae. Petitioners instead focus on differences in Freddie Mac's charter language, but that language does not compel differential treatment of the entities.

D. Petitioners' remaining arguments lack merit.

1. Petitioners cite the 1974 charter amendment authorizing Fannie Mae to move out of the District of Columbia while remaining a D.C. corporation for purposes of jurisdiction and venue. Petitioners believe the amendment was enacted to ensure diversity-of-citizenship jurisdiction, which would have been unnecessary if Fannie Mae already had plenary access to the federal courts. But Congress's actions in 1974 shed no light on the meaning of its 1954 enactment. Neither the text nor the legislative history of the 1974 amendment refers to diversity jurisdiction, and the reference to jurisdiction in the 1974 amendment can readily be explained as an effort to ensure that Fannie Mae would be treated as a D.C.

corporation for purposes of general personal jurisdiction even if it moved its headquarters to Maryland or Virginia.

2. Petitioners argue that the sue-and-be-sued clause should be read in light of § 1349, which states that district courts "shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress." The same argument was rejected in *Red Cross* for the same reason it should be rejected here: jurisdiction is not based on the ground that Fannie Mae is federally chartered, but on the ground that Fannie Mae is specifically authorized to sue and be sued in federal court.

3. Finally, petitioners contend that Fannie Mae's sue-and-be-sued clause should be construed only as a general corporate-capacity provision, rather than as jurisdiction-conferring, to avoid doubts about whether Congress possesses constitutional authority to vest jurisdiction in that manner. But the Court (through Chief Justice Marshall) expressly held in 1824 in *Osborn* that Congress *does* have such authority. *Red Cross* reaffirmed that holding, explicitly rejecting the constitutional concern petitioners proffer now.

ARGUMENT

This Court has recognized for two centuries that Congress may confer federal jurisdiction over suits by and against federally-chartered entities by specifically authorizing suit in federal court. Fannie Mae's charter implements that rule through familiar jurisdiction-conferring language that authorizes suits by and against Fannie Mae in any federal court of com-

petent jurisdiction. Petitioners' entire argument rests on the single premise that the phrase "of competent jurisdiction" necessarily requires some independent basis of subject-matter jurisdiction. It does not. Jurisdiction-conferring statutes *routinely* use the phrase to ensure that suit is brought in the proper federal court. The phrase serves the same function here, as the text and history of Fannie Mae's charter make clear, and as the courts of appeal have consistently recognized, *see supra* at 14-15. The judgment should be affirmed.

I. CONGRESS CONFERS JURISDICTION OVER SUITS BY AND AGAINST FEDERALLY-CHARTERED ENTITIES BY SPECIFICALLY AUTHORIZING SUIT IN FEDERAL COURT

Congress has always expressly authorized, and continues to authorize, Fannie Mae to sue and be sued *in federal court specifically*. *See supra* at 4-6; 12 U.S.C. § 1723a(a) (Fannie Mae can sue and be sued "in any court of competent jurisdiction, State or Federal"). Since 1809, this Court has recognized that language authorizing suits by and against federally chartered entities specifically in *federal* court suffices to establish federal jurisdiction over such suits. Petitioners seek to cast doubt on the meaning and vitality of that clear rule, but Congress has followed it for centuries, as it did in Fannie Mae's charter. There is no reason this Court should now disrupt or confuse two centuries of straightforward statutory precedent.

A. The *Deveaux-Osborn-Red Cross* Rule Is Clear, Settled, And Correct

In *Red Cross*, this Court addressed a provision in the American Red Cross's charter authorizing it "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." 505 U.S. at 248 (quotations and citation omitted). The question was whether that provision "confer[red] original jurisdiction on federal courts over all cases to which the Red Cross is a party, with the consequence that the organization is thereby authorized to remove from state to federal court any state-law action it is defending." *Id.* This Court emphasized that it did not answer that question on "a clean slate." *Id.* at 252. Rather, since the Republic's early years, the Court had on "several occasions ... consider[ed] whether the 'sue and be sued' provision of a particular federal corporate charter conferred original federal jurisdiction over cases to which that corporation was a party." *Id.* And those early cases consistently held that when the "sue and be sued" provision specifically authorized suit *in federal courts*, rather than in courts generally, the authorization was "sufficient" to confer federal subject-matter jurisdiction. *Id.*

The first case was *Deveaux*, which held that a provision authorizing the first Bank of the United States "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any place whatsoever" did *not* confer independent federal jurisdiction. 5 Cranch at 85. This generally stated power to sue and be sued, Chief Justice Marshall's opinion explained for the Court, "is conferred by every incorporating act, and

is not understood to enlarge the jurisdiction of any particular court." *Id.* The Court *contrasted* that provision with a different provision that subjected the Bank's president and directors to suit and "expressly authorize[d] the bringing of that action *in the federal or state courts*." *Id.* at 86 (emphasis added). That difference reflected Congress's intention that a generic right to sue "does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*

In *Osborn*, the Court considered a revised sue-and-be-sued clause written into the charter of the second Bank of the United States. That clause now authorized the Bank to "sue and be sued ... in all State Courts having competent jurisdiction, *and in any Circuit Court of the United States*." 9 Wheat. at 817 (emphasis added). Contrasting that clause with the first Bank's provision, which merely granted "a general capacity in the Bank to sue, without mentioning the Courts of the Union," the Court (again per Chief Justice Marshall) held that the new reference to suit specifically "in every Circuit Court of the United States" sufficed to "confer[] jurisdiction on the Circuit Courts of the United States." *Id.* at 817-18.

The third case was *Bankers Trust Co. v. Texas & Pacific Railway Co.*, 241 U.S. 295 (1916), which considered a charter authorizing the Texas & Pacific Railroad "to sue and be sued ... in all courts of law and equity within the United States," *id.* at 303. Recognizing that Congress had "framed" the provision "in the light of" *Osborn* and *Deveaux*, this Court observed that the language had "the same generality and natural import" as the language in *Deveaux* because instead of authorizing suit specifically in fed-

eral court, it provided "only a general capacity to sue and be sued in courts of law and equity whose jurisdiction as otherwise defined was appropriate to the occasion." *Id.* at 304-05.

The fourth case was *D'Oench, Duhme*, which held that federal district courts had jurisdiction under the FDIC's charter because it authorized the FDIC to sue and be sued "in any court of law or equity, State or Federal." 315 U.S. at 455. *D'Oench, Duhme* also noted in a footnote a separate statutory basis for federal jurisdiction, *id.* at 455 n.2, but as this Court explained in *Red Cross*—and contrary to the argument petitioners repeat at length here, Petr. Br. 45-47—that "footnote did not ... raise any doubt that the Court held federal jurisdiction to rest on the terms of the 'sue and be sued' clause." *Red Cross*, 505 U.S. at 254.

The *Red Cross* Court read the foregoing precedents as together putting Congress "on prospective notice of the language necessary and sufficient to confer jurisdiction." 505 U.S. at 252. When a federal charter "expressly authoriz[es] the organization to sue and be sued in federal courts," the Court emphasized, the provision "extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction." *Id.* at 257. Given the foundation of that "basic rule" (*id.* at 253) in two centuries of precedent, petitioners' complaint that the rule "defies the ordinary tools of statutory construction" (Petr. Br. 3) is of course irrelevant. *Cf. Kurns v. R.R. Friction Prods. Corp.*, 132 S. Ct. 1261, 1270 (2012) (Kagan, J., concurring). But the complaint is misplaced in any event, for the rule also follows from at

least two recognized principles of statutory construction.

First, the rule gives independent meaning to each term in the sue-or-be-sued clause. *See Bailey v. United States*, 516 U.S. 137, 146 (1995). The Court's precedents recognize that when Congress intends a sue-and-be-sued clause to operate only as a grant of corporate capacity, it is enough to grant the power to sue generally, in any court, without specifying the particular courts in which suit is authorized. *See Deveaux*, 5 Cranch at 85-86; *Bankers Trust*, 241 U.S. at 304-05. But when Congress *does* specify the type of court in which suit can be brought, it must mean to do something *more* than merely recognize a general capacity to sue—i.e., to invest the identified courts with authority to hear such suits. *See Deveaux*, 5 Cranch at 85-86; *Osborn*, 9 Wheat. at 817-18; *Red Cross*, 505 U.S. at 257.

The point is well illustrated by *Shoshone Mining Co. v. Rutter*, 177 U.S. 505 (1900), a case petitioners cite as "reject[ing] the argument that a statute providing for suit 'in a court of competent jurisdiction' granted automatic jurisdiction in the federal courts." Petr. Br. 22. Petitioners ignore the *reason* the Court rejected that argument: the provision "did not in express language prescribe either a Federal or a state court, and did not provide for exclusive or concurrent jurisdiction." 177 U.S. at 506. If the provision had expressly authorized suit in federal court, the Court made clear that authorization would have been entitled to jurisdictional force. *Id.*

Second, the rule recognizes that Congress is presumed to be aware of this Court's prior interpreta-

tions of statutory language, and to adopt those interpretations in enacting similar language. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 696-98 (1979); *United States v. Merriam*, 263 U.S. 179, 186 (1923). By the time Fannie Mae was established in 1938 and its charter was codified in 1948, this Court's precedents had already "placed Congress on prospective notice of the language necessary and sufficient to confer jurisdiction" in a sue-and-be sued clause—Congress simply needed to authorize suit specifically in federal court. *Red Cross*, 505 U.S. at 252. Petitioners' resistance to that rule is based on nothing more than "implicit dissatisfaction with this Court's construction of the charter provisions at issue" in its prior cases. Brief for United States as Amicus Curiae at 20, *Red Cross*, *supra* (No. 91-594).

B. Petitioners Misconstrue The *Deveaux–Osborn-Red Cross* Rule

Petitioners seek to minimize the *Deveaux-Osborn-Red Cross* rule, arguing that an express authorization to sue in federal court is merely "relevant" to the jurisdictional inquiry. Petr. Br. 5. Not so. According to *Red Cross* and the precedents on which it is based, if Congress wants to confer jurisdiction through a sue-and-be-sued clause, it is both "necessary *and sufficient*" to authorize suit in federal courts specifically. 505 U.S. at 252 (emphasis added); *see id.* at 257 (authorizing charter entity to sue-and-be-sued specifically in federal court "suffices to confer federal jurisdiction"); *see also id.* at 265 (Scalia, J., dissenting) (reading majority opinion as creating categorical rule). The rule thus obviates the need for the kind of exhaustive scrutiny of every charter's text, history, and purpose that would be re-

quired if every charter were interpreted on a clean slate.

On the other hand, the rule obviously does not mean, as petitioners' caricature would have it, that a charter clause grants federal jurisdiction when it explicitly does *not* grant jurisdiction. Petitioners' nonsensical example illustrates the absurdity of their point: "Fannie Mae may sue and be sued in federal court *only if* another statute independently confers subject-matter jurisdiction." Petr. Br. 40 (quotation omitted); *see* SG Br. 22. This example would indeed require an independent basis for jurisdiction, but any Congress that sought to achieve that objective would simply do what Congress has *always* done: authorize the entity to sue and be sued in *any* court, *without* specifying federal courts. That petitioners must resort to a fanciful hypothetical only confirms the vitality of the *Deveaux-Osborn-Red Cross* rule in any practical applications.

C. Statutory Stare Decisis Principles Preclude Overturning The *Deveaux-Osborn-Red Cross* Rule

The petition presents the question whether *Red Cross* should be overruled, but petitioners now argue that it should be overruled only if it represents the caricature petitioners imagine: a sue-and-be-sued clause that mentions federal courts *always* creates jurisdiction, *even if* the clause expressly states that it should *not* be construed as conferring jurisdiction. Petr. Br. 51-52. Because *Red Cross* holds no such thing, petitioners implicitly concede that it should not be overruled.

This Court in any event "does not overturn its precedents lightly." *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). And "*stare decisis* carries enhanced force when a decision"—such as *Red Cross*—"interprets a statute," *Kimble v. Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409, (2015), because "Congress remains free to alter what [the Court has] done," *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). The *Deveaux-Osborn-Red Cross* rule is correct on its own terms, as shown above. *See supra* at 23-27. But even if there were doubt, principles of statutory stare decisis would preclude overruling it now, for the reasons set forth more fully in the amicus brief of the American Red Cross.

II. THE STATUTORY TEXT, CONTEXT, HISTORY, AND PURPOSE CONFIRM THAT FANNIE MAE'S CHARTER CONFERS JURISDICTION ON FEDERAL DISTRICT COURTS

Under the *Deveaux-Osborn-Red Cross* rule, the Fannie Mae charter provision authorizing it to sue and be sued specifically in federal court constitutes a grant of jurisdiction absent specific, compelling evidence that Congress had a different intent. *See supra* Part I. Here, however, all available evidence confirms the charter's jurisdictional character.

A. Fannie Mae's Original Sue-And-Be-Sued Clause Unambiguously Conferred Federal Jurisdiction

As established in 1938, Fannie Mae was authorized to "sue and be sued, complain and defend, in any court of law or equity, State or Federal." NHA § 301(c)(3), 48 Stat. 1253. And when Congress codi-

fied Fannie Mae's charter in 1948, Congress employed the same language, *see supra* at 5, which was materially identical to language Congress used in amending the Red Cross charter in 1947, and to language this Court held to confer federal jurisdiction just five years before that in *D'Oench, Duhme*. *See Red Cross*, 505 U.S. at 260 ("[T]he fact that our opinion in *D'Oench, Duhme* was handed down before the 1947 amendment to the Red Cross Charter indicates that Congress may well have relied on that holding to infer that amendment of the Red Cross Charter's 'sue and be sued' provision to make it identical to the FDIC's would suffice to confer federal jurisdiction. Congress was, in any event, entitled to draw the inference." (citation omitted)). Even the dissent below conceded that Fannie Mae's original charter "inarguably gave Fannie Mae access to the federal courts." Pet. App. 33a.[2]

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[2] The government observes that there were other grounds for federal jurisdiction over suits involving Fannie Mae (SG Br. 24), but the other potential grounds did not cover *all* such suits, because suits below the § 1331 minimum amount-in-controversy were not covered under § 1349, and could not be removed under § 1442. *See supra* at 5-6. In any event, it is not unusual for Congress to establish more than one basis for jurisdiction over the same action. *Compare* 28 U.S.C. § 1331 (jurisdiction for cases "arising under" federal law), *with id.* § 1337 (jurisdiction for actions "arising under any Act of Congress regulating commerce"). Indeed, there were multiple bases for federal jurisdiction as to Fannie Mae before 1968, *see supra* at 4-9, and in the FDIC's charter as discussed in *D'Oench, Duhme*, 315 U.S. at 455 & n.2; *see also Red Cross*, 505 U.S. at 254; *infra* at 52-53 (discussing Freddie Mac's redundant jurisdictional provisions), 34-36 (discussing jurisdictional redundancy in Fair Labor Standards Act).

B. The 1954 Charter Amendments Reaffirmed The Charter's Jurisdiction-Conferring Nature

The 1954 amendment to Fannie Mae's charter did not eliminate the jurisdictional grant in the sue-and-be-sued clause, but confirmed it.

The 1954 Act replaced the reference to courts of "law or equity" and authorized suit by and against Fannie Mae "in any court *of competent jurisdiction*, State or Federal." 12 U.S.C. § 1723a(a) (emphasis added). According to petitioners, the addition of the italicized language transformed the sue-and-be-sued clause from a grant of jurisdiction to a mere grant of general corporate capacity, on the theory that "court of competent jurisdiction" necessarily refers to a court with an independent basis for exercising subject-matter jurisdiction. Petr. Br. 21; *see* SG Br. 17.

Petitioners are wrong. It was and is common for Congress to confer jurisdiction by authorizing suit in federal courts "of competent jurisdiction." Every other contextual indicator confirms that Congress followed that routine course in amending Fannie Mae's charter.

1. *Petitioners' Reading Would Impermissibly Render Statutory Language Superfluous*

To start, purely as a textual matter, petitioners' construction of the 1954 amendment is impermissible because it renders the words "State or Federal" superfluous. If the amended sue-or-be-sued clause was supposed to operate solely as a grant of general capacity, there was no reason to identify "State or Federal" courts in particular as courts available for

suit—it would have sufficed simply to authorize suit in any "court of competent jurisdiction," just as Congress did in the provision at issue in *Shoshone*, 177 U.S. at 506.[3] Petitioners' interpretation gives no meaning to "State or Federal," but Fannie Mae's does: the word "Federal" confers federal jurisdiction, and the word "State" makes clear that the federal jurisdiction conferred is not exclusive but concurrent. *Cf. id.*

As the following sections show, Fannie Mae's interpretation *also* gives clear meaning to the phrase "court of competent jurisdiction," while petitioners' does not.

2. *The Phrase "Court Of Competent Jurisdiction" Is Common In Jurisdiction-Conferring Provisions*

In addition to rendering the phrase "State or Federal" surplusage, petitioners' interpretation of Fannie Mae's sue-or-be-sued clause misunderstands the phrase "court of competent jurisdiction." According to petitioners, a provision authorizing suit in a court "of competent jurisdiction" must refer to a court with independent subject-matter jurisdiction. But a reference to a court "of competent jurisdiction" does *not* necessarily refer to a court with independent subject-matter jurisdiction, and there is overwhelming contextual evidence that it does not do so here.

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[3] Indeed, Congress *did* omit the "State or Federal" phrase from another federal charter's sue-and-be-sued clause in the very same 1954 Act that amended Fannie Mae's charter. *See supra* at 8-9; *infra* at 47-48.

As a general matter, this Court has recognized that the phrase "court of competent jurisdiction" can in context refer to a court with personal jurisdiction rather than independent subject-matter jurisdiction. *See United States v. Morton*, 467 U.S. 822, 828 (1984). Significantly, this Court held in 1952—just before Congress amended Fannie Mae's charter—that another statutory reference to a "court of 'competent jurisdiction'" referred *not* to subject-matter jurisdiction, but to the court's personal jurisdiction. *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952). That contemporaneous, on-point precedent should be enough to rebut petitioner's contention that Congress *must* have understood the phrase "court of competent jurisdiction" as referring to a court with independent subject-matter jurisdiction. And the principal authorities cited by petitioners—*Ex parte Phenix Ins. Co.*, 118 U.S. 610 (1886), and *Califano v. Sanders*, 430 U.S. 99 (1977)—do nothing to establish such a categorical rule.[4]

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[4] In *Phenix*, the Court observed that a statute stating that a trustee could be appointed by a "court of competent jurisdiction" did not "purport to confer jurisdiction" but "depend[s] on other provisions of law." 118 U.S. at 617. But the provision there did not name federal courts specifically, and the trustee-appointment obviously implicated no uniquely important role for federal courts. In *Sanders*, the Court merely observed in a footnote that the Administrative Procedure Act's reference to a "court of competent jurisdiction" "*seem[s]* to look to outside sources of jurisdictional authority," and that the text of that and other provisions is thus "*ambiguous* in providing a separate grant of subject-matter jurisdiction." 430 U.S. at 106 n.6 (emphasis added). If anything, that observation refutes petitioners' theory that a "court of competent jurisdiction" necessarily refers to a court with independent subject-matter jurisdiction.

There is more. In particular, courts in the years just before 1954 routinely interpreted statutes that included the phrase "court of competent jurisdiction" as conferring jurisdiction without requiring an independent basis for subject-matter jurisdiction. And Congresses both before and after 1954 used the same language in other jurisdiction-conferring provisions.

Fair Labor Standards Act. The Fair Labor Standards Act ("FLSA") states that a FLSA suit "may be maintained ... in any Federal or State court of competent jurisdiction," 29 U.S.C. § 216(b); before 1954 it stated that such an action "may be maintained in any court of competent jurisdiction," *id.* (1952). This Court stated in 1942 that jurisdiction over FLSA actions was conferred *both* by § 216(b)'s predecessor *and* by the jurisdictional statute now codified as 28 U.S.C. § 1337. *See Williams v. Jacksonville Terminal Co.*, 315 U.S. 386, 390 (1942). Other courts agreed. *See Donahue v. Susquehanna Collieries Co.*, 138 F.2d 3, 6 (3d Cir. 1943) ("We think the effect of this provision is to allow a suitor to proceed in federal court regardless of citizenship of the litigants and amount involved or to sue in a state court at his convenience."); *Mizrahi v. Pandora, Frocks Inc*, 86 F. Supp. 958, 959 (E.D.N.Y. 1949); *Booth v. Montgomery Ward & Co.*, 44 F. Supp. 451, 452 (D. Neb. 1942). Courts interpreting § 216(b) as a jurisdictional grant construed the "court of competent jurisdiction" phrase to "mean that an action may be maintained in a court of general jurisdiction whether federal, state or territorial." *Mizrahi*, 86 F. Supp. at 959; *see Booth*, 44 F. Supp. at 452.

The government says that it is "unclear" whether *Williams* actually *held* that § 216(b) constituted an

independent grant of jurisdiction. SG Br. 29 n.3. But to determine what Congress in 1954 would reasonably have thought the phrase "of competent jurisdiction" meant, what matters is what this Court explicitly *said it meant*—not whether the Court's statement technically qualified as a "holding." Given the multiple contemporaneous judicial constructions of § 216(b)'s language as conferring jurisdiction, Congress was certainly "entitled to draw the inference" that its use of the same language would be construed the same way. *Red Cross*, 505 U.S. at 260

The government itself has also construed § 216(b)'s plain language as a jurisdictional grant, asserting in *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003), that § 216(b) "confers jurisdiction on federal courts over FLSA claims." Brief for the United States as Amicus Curiae at 5, *Breuer*, *supra* (No. 02-337). The Court agreed, holding that § 216(b) established federal jurisdiction over the suit, 538 U.S. at 694, with no suggestion that the phrase "court of competent jurisdiction" required an independent basis for subject-matter jurisdiction. The government now says that its brief in *Breuer* should be disregarded because it did not "analyze" whether its statement was accurate (SG Br. 29 n.3), and that this Court's jurisdictional holding in *Breuer* likewise can be ignored because there were other potential bases for federal jurisdiction (*id.* at 29). The government is wrong about this Court's opinion in *Breuer*,[5] but even if it were true that both the gov-

[5] The Court in *Breuer* unambiguously held that § 216(b) *itself* sufficed to establish jurisdiction, and that § 1331 merely provided an *alternative* jurisdictional basis for suit. 538 U.S. at 694.

ernment and this Court in *Breuer* simply construed § 216(b) as jurisdictional based on its plain language, without detailed analysis, that would only confirm Fannie Mae's point: the 1954 Congress, too, would reasonably have construed the same plain language as jurisdictional in amending Fannie Mae's charter.

Exclusive Federal Jurisdiction Provisions. In the late-nineteenth and early-twentieth centuries, the only basis for federal jurisdiction in actions arising under federal law was the general federal-question jurisdiction statute. Act of Mar. 3, 1887, ch. 372. 24 Stat. 552. But that provision was from the beginning and until 1980 subject to an amount-in-controversy requirement. *Id.* Another statute, currently codified at 28 U.S.C. § 1337, allowed for jurisdiction "arising under any law regulating commerce" regardless of the amount in controversy, but was not enacted until 1911, and was in any event understood at the outset to apply only to suits under the Interstate Commerce Act. *See Murphy v. Colonial Fed. Sav. & Loan Ass'n*, 388 F.2d 609, 614 (2d Cir. 1967) (Friendly, J.). Accordingly, absent an independent grant of jurisdiction, federal courts had no authority to hear suits arising under federal law but falling below the minimum value.

Congress during this period enacted several provisions establishing exclusive federal jurisdiction over actions under particular federal statutes regardless of the amount in controversy. These statutes functioned as jurisdictional grants because they provided the only basis for federal jurisdiction and because they precluded state-court jurisdiction. And the statutes often conferred jurisdiction by authoriz-

ing suits in federal courts "of competent jurisdiction."

For example, § 9 of the Interstate Commerce Act authorized "any person" with an injury under the Act either to bring an agency complaint or to sue for damages exclusively "in any district or circuit court of the United States of competent jurisdiction." Ch. 104, § 9, 24 Stat. 382 (1887). Because the provision authorized suit by "any person" and included no amount-in-controversy requirement, it was recognized as a grant of exclusive federal jurisdiction. *See Pennsylvania R.R. Co. v. Puritan Coal Mining Co.*, 237 U.S. 121, 128-29 (1915). Congress enacted an identically worded provision as part of the Communications Act of 1934, *see* 47 U.S.C. § 207, which has also been construed as a grant of jurisdiction, *see Self v. Bellsouth Mobility, Inc.*, 700 F.3d 453, 461 (11th Cir. 2012); *see also* Packers and Stockyards Act of 1921, Pub. L. No. 67-51, § 308, 42 Stat. 165 (codified at 7 U.S.C. § 209) (allowing any injured person to sue for "the full amount of damages sustained in consequence of such violation," and authorizing plaintiff to sue "in any district court of the United States of competent jurisdiction").

Housing and Rent Act of 1947. As originally enacted, § 205 of the Housing and Rent Act of 1947, 61 Stat. 199, provided that certain suits "may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation." Courts had split over whether that provision itself grants jurisdiction, or whether an independent basis for jurisdiction was required such that federal-court jurisdiction would exist only if the amount-in-controversy were satisfied. *See*

Schuman v. Greenberg, 100 F. Supp. 187, 189 (D.N.J. 1951) (noting circuit conflict).

Congress in 1951 resolved that conflict by amending the provision to authorize suit "in any Federal court of competent jurisdiction regardless of the amount involved, or in any State or Territorial court of competent jurisdiction." 65 Stat. 147. Even though the amended provision included the "of competent jurisdiction" language, it unambiguously granted federal jurisdiction by authorizing federal suits that could not otherwise be heard by federal courts. *See Schuman*, 100 F. Supp. at 189.

Post-1954 Provisions. Since 1954, Congress has continued to confer jurisdiction by authorizing suit in federal (and state) courts "of competent jurisdiction." *See, e.g., Lehman v. Nakshian*, 453 U.S. 156, 164 (1981) (stating that 29 U.S.C. § 633a(c), which authorizes suit "in any Federal district court of competent jurisdiction" for ADEA claims against the government, "conferred jurisdiction over ADEA suits upon the federal district courts"); 29 U.S.C. § 722 (authorizing action "in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy"). Congress has also enacted numerous provisions authorizing specific suits by the United States or federal agencies in federal district courts "of competent jurisdiction." *See* 15 U.S.C. § 687 (action "shall be determined and adjudged by a court of the United States of competent jurisdiction" in suit "brought by the United States at the instance of the Administration or the Attorney General"); *accord* 12 U.S.C. § 501a; 12 U.S.C. § 622; 12 U.S.C. § 1782(d); 12 U.S.C. § 1817; 15 U.S.C. §

687; 15 U.S.C. § 689m(b). The "of competent jurisdiction" language in those statutes would be superfluous if it required an independent basis for subject-matter jurisdiction, because there is federal jurisdiction over every government suit under 28 U.S.C. § 1345.

3. *The 1954 Act Language Was Identical To Another NHA Provision Contemporaneously Construed By Appellate Courts As Conferring Subject-Matter Jurisdiction On Federal Courts*

While the examples above show that Congress as a general matter would not necessarily have understood "court of competent jurisdiction" as nullifying the preexisting jurisdictional grant, there is also compelling evidence that Congress affirmatively understood that it was using jurisdictional language in the 1954 Act.

As the government concedes (SG Br. 2-3), the 1954 charter amendment—which revised Title III of the NHA—used language identical to a provision in Title I of the NHA that authorized the FHA to "sue and be sued in any court of competent jurisdiction, State or Federal." 49 Stat. 722 (codified at 29 U.S.C. § 1702). In the 1940s, two federal appellate courts had held that there was "no question" but that the NHA Title I provision conferred jurisdiction on federal district courts to hear suits by and against the FHA. *Ferguson*, 126 F.2d at 756; *see George H. Evans*, 169 F.2d at 502. Specifically, those courts held that suits against the FHA that would otherwise be subject to the Court of Claims' exclusive jurisdiction—because they were contract-based suits against the United States for money damages of more than

$10,000, 28 U.S.C. § 1491 (1948)—could be brought in district court because the NHA sue-and-be-sued provision specifically vested the district court with jurisdiction. *Ferguson*, 126 F.2d at 756; *George H. Evans*, 169 F.2d at 502.

The government says the courts in *Ferguson* and *George H. Evans* may have believed that there was an alternative basis for federal jurisdiction (e.g., that federal contract actions arise under federal law). SG Br. 31. This misses the point. The question was not whether there was federal jurisdiction at all—there was—but whether jurisdiction was exclusive in the Court of Claims. SG Br. 31-32. The *Ferguson* and *George H. Evans* courts held it was not, because the FHA provision specifically conferred jurisdiction on the district courts—even though the provision had the same "court of competent jurisdiction" language Congress would soon employ in Fannie Mae's identical provision.

The government also asserts that there is "no reason to believe that the 1954 Congress was aware of those two decisions or intended to incorporate those courts' approach" when amending Fannie Mae's charter. SG Br. 31. Of course there is: both provisions appear in the NHA, and Congress's amendment to Fannie Mae's charter used language identical to the FHA provision construed in the 1940s appellate decisions. SG Br. 2-3. The rule that Congress is presumed to be aware of and adopt prior appellate interpretations of related statutes, *see Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 589-90 (2010), thus applies fully here.

The 1940s appellate courts in any event are not the only authorities that have read the NHA Title I provision that way. The *government itself* has represented to this Court—citing *Ferguson*—that the provision "*[p]lainly* ... provides a basis for district court jurisdiction," because it "authoriz[es] suit 'in any court of competent jurisdiction, State or Federal.'" Brief for the Respondents in Opposition at 9 & n.6, *Portsmouth Redevelopment and Housing Auth. v. Pierce* (U.S. No. 83-90) (emphasis added).

When Congress used the FHA language in amending Fannie Mae's sue-and-be-sued clause, Congress was entitled to read that language the same way it was read by contemporaneous judicial decisions and the same way the government itself has read it.

4. *The Phrase "Court Of Competent Jurisdiction" Is Not Superfluous If It Does Not Refer To A Court With Independent Subject-Matter Jurisdiction*

Petitioners contend that if replacing "court of law or equity" with "court of competent jurisdiction" did not eliminate the jurisdictional effect of Fannie Mae's sue-and-be-sued clause, then the change had no legal effect at all. Petr. Br. 28-29; SG Br. 23. Petitioners are wrong—the phrase "court of competent jurisdiction" does not lack legal effect in a jurisdiction-conferring provision like Fannie Mae's.

a. As shown above, Congress has used the phrase "court of competent jurisdiction" repeatedly in jurisdiction-conferring statutes, and the phrase is not understood in those statutes as lacking legal effect. *See supra* at 33. Rather, this Court has held that

the phrase can operate to ensure that suit is heard in a court with adequate *personal* jurisdiction. *See Morton*, 467 U.S. at 828. And indeed, this Court held that the phrase was used exactly that way in *Blackmar*, 342 U.S. at 516, just two years before Congress used the same phrase in amending Fannie Mae's clause. *See supra* at 33. Congress was entitled to assume the language would have the same effect in Fannie Mae's jurisdiction-conferring clause.

b. As also discussed above, appellate courts had recently construed the same language as jurisdiction-conferring for suits against the FHA. And the particular issue in those decisions was an issue that also could have arisen in suits against Fannie Mae. Congress thus would have reasonably understood that adopting the same language would have the same result.

The issue was the Court of Claims' exclusive jurisdiction over damage suits for more than $10,000 against federal agencies like FHA and Fannie Mae. In fact, the issue could have been especially complicated for Fannie Mae because of other features in the 1954 Act. Under that Act, Fannie Mae remained an "agency" within the department that would later become HUD, under federal control. *See supra* at 6, 9. But Congress also split its operations into three, and sought to finance one of those operations (secondary-market activities) with a mix of public and private capital, leaving the other two operations subject solely to public financing. *See supra* at 7. That structure created a potential for difficult jurisdictional questions. There would have been federal jurisdiction over certain suits by or against Fannie Mae at the time—as a federal agency, it was author-

ized to sue in and remove suits to federal court, and as a government-owned corporation, there was federal-question jurisdiction over suits satisfying the requisite amount in controversy. *See supra* at 5-6, 9. But the Court of Claims had exclusive jurisdiction over damages suits for more than $10,000 against the "United States," 28 U.S.C. § 1491 (1948), which was understood to mean suits in which "the judgment sought would expend itself on the public treasury." *Dugan v. Rank*, 372 U.S. 609, 620 (1963) (quoting *Land v. Dollar*, 330 U.S. 731, 738 (1947)). It would have been difficult to identify which suits against Fannie Mae fell within that exclusive jurisdiction, since not all would implicate the public fisc given Fannie Mae's mixed capital structure. The language Congress adopted in 1954 avoided that difficulty, because it had *already* been judicially construed as granting jurisdiction to district courts without implicating the Court of Claims' exclusive jurisdiction.

The government responds that even without the phrase "of competent jurisdiction," the provision would have avoided jurisdiction in the Court of Claims. SG Br. 18. But the government's only counter-example is the Red Cross sue-and-be-sued clause, which never had the same language, because the Red Cross *never had the same issue*—it was never a federally funded agency. And as the government itself acknowledges, Congress sometimes chooses language to "simply confirm[] what would in any event be the most natural reading of the relevant law." SG Br. 19. It would have been reasonable for Congress, in the course of generally overhauling the housing statutes, to import the FHA language into Fannie

Mae's charter simply to confirm that suits against Fannie Mae should be treated the same as suits against the FHA for purposes of the Court of Claims' exclusive jurisdiction.[6]

c. The phrase "court of competent jurisdiction" also clarified the effect of another change in the 1954 Act related to venue. As part of that Act, Congress provided that Fannie Mae "shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof." 1954 Act [§ 302(a)], 68 Stat. 613. But the new venue limitation potentially conflicted with the then-existing sue-and-be-sued clause, which allowed suit in "*any* court of law or equity." 62 Stat. 1208 (emphasis added).

Replacing that language with "any court of competent jurisdiction" eliminated the potential conflict, because contemporaneous courts had held that this language did not "broaden the scope" of generally

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[6] Further, it is not clear that the government's argument would have prevailed in 1954. Courts at that time understood the phrase "court of competent jurisdiction" to refer to "a *court of general jurisdiction* whether federal, state or territorial," *Mizrahi*, 86 F. Supp. at 959 (emphasis added), which is why the phrase avoided the Court of Claims' exclusive jurisdiction. Rather than omit the phrase used in the FHA provision and provoke disputes over the Court of Claims' exclusive jurisdiction, it would have made sense to adopt the full FHA language and expect the same treatment for suits against Fannie Mae.

This understanding of the "of competent jurisdiction" terminology as referring to a court of general jurisdiction also ensured that "state courts of specialized jurisdiction—such as family courts and small-claims courts—need not entertain suits that do not satisfy those courts' jurisdictional requirements." Pet. App. 13a-14a; *cf. Testa v. Katt*, 330 U.S. 386 (1947).

applicable venue provisions. *Mizrahi*, 86 F. Supp. at 959 (construing FLSA provision); *see also Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1110 n.5 (D.C. Cir. 1974); *McDaniel v. IBP, Inc.*, 89 F. Supp. 2d 1289, 1292 (M.D. Ala. 2000). Altering the Fannie Mae charter's jurisdictional grant to authorize suit in any federal court "of competent jurisdiction" ensured that the separate 1954 change in Fannie Mae's residency for venue purposes would be given effect.

5. *Petitioners' Reading Depends On The Erroneous Premise That The 1954 Amendment Eliminated Fannie Mae's Access To Federal Courts Upon Privatization*

Petitioners' only explanation for the 1954 amendment is that Congress sought to ensure that the sue-and-be-sued clause did *not* grant jurisdiction, so that Fannie Mae would have the same access to federal courts as other private entities once the government's capital position dropped below 50%. Petr. Br. 24-25; SG Br. 13.

The premise of that argument is demonstrably wrong. Congress did revamp Fannie Mae's structure in 1954 with the expectation that Treasury's preferred investment in Fannie Mae would drop below 50% and eventually be extinguished. *See supra* at 7. But because the 1954 Act also deemed Fannie Mae a federal "agency" controlled entirely by the government, *see supra* at 6,[7] federal courts *still* would have had jurisdiction over suits by Fannie Mae, 28 U.S.C.

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[7] When Congress spun Ginnie Mae off from Fannie Mae in 1968, Congress declared that Ginnie Mae would "*remain* in the Government," 1968 Act § 801, 82 Stat. 536 (emphasis added), whereas Fannie Mae would finally become privately owned.

§ 1345 (1948), and over suits filed against Fannie Mae in state court that Fannie Mae chose to remove, *id.* § 1442(a). Moreover, two of Fannie Mae's three core functions under the 1954 Act were wholly governmental and were never slated for privatization. *See supra* at 7.

Thus, contrary to petitioners' theory, the 1954 amendment to the sue-and-be-sued clause would *not* have put Fannie Mae in the same position as ordinary private entities. Rather, the 1954 Act explicitly recognized that Fannie Mae would not be privatized *absent further legislation*: § 303(g) of the 1954 charter directed that once Treasury's preferred shares were redeemed, the Executive Branch should propose legislation to transfer Fannie Mae's secondary-market operations to private investors, while retaining Fannie Mae's two governmental functions within the federal government. *See supra* at 7. Moreover, petitioners' theory of Congress's purpose in amending the sue-and-be-sued clause in 1954 makes no practical sense: if Congress wanted to put Fannie Mae on an equal footing with other private entities when Fannie Mae actually became a private corporation, Congress more sensibly would have done so in the 1968 law that actually made Fannie Mae a private corporation. But the 1954 amendment simply could not have placed Fannie Mae in the same position as private entities, which refutes petitioners' only theory of that amendment's purpose.

6. *If Congress In 1954 Wanted To Alter The Jurisdictional Effect Of The Charter, It Would Have Used The Same Language It Used In Other Provisions Of The Same 1954 Act*

Petitioners also have no answer to Judge Kavanaugh's observation that if "Congress in 1954 did not want to continue to confer federal jurisdiction in Fannie Mae cases, it logically would have omitted the word 'Federal' from the statute, not attempted a bank shot by adding the words 'of competent jurisdiction.'" *Pirelli*, 534 F.3d at 786.

And indeed, Congress did exactly that in two other provisions of the 1954 Act. *First*, Congress deleted the phrase "State or Federal" from the sue-and-be-sued provision of the FSLIC charter, while adding the "of competent jurisdiction" phrase. FSLIC's original sue-and-be-sued clause—identical to Fannie Mae's pre-1954 clause—was an unambiguous grant of jurisdiction. *See supra* at 8-9. The 1954 Act eliminated the jurisdictional grant by deleting the specific reference to suit in "Federal or State" court, substituting language this Court had previously held to constitute only a general right to sue.[8] "The fact that Congress chose to keep that all-important word

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[8] 68 Stat. 633 (authorizing suits by and against FSLIC "in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico"); *see Shoshone*, 177 U.S. at 506 (distinguishing non-jurisdictional provision generally granting authorization to sue "in a court of competent jurisdiction" from jurisdictional provision that "in express language prescribe[d] either a Federal or a state court"); *Bankers Trust*, 241 U.S. at 304-05 (Congress understood that under *Deveaux* and *Osborn*, general grant of capacity to sue did not confer jurisdiction).

[Federal] in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

The government responds that the phrase "State or Federal" was deleted from the FSLIC statute—but not Fannie Mae's—to make clear that FSLIC could sue and be sued in courts in the Territories and in Puerto Rico. SG Br. 26. The government cites nothing to support that theory, and it rests on the dubious assumption that courts in those jurisdictions did not already constitute "State" courts. If that were true, then by *retaining* the phrase "State or Federal" in Fannie Mae's charter, Congress effectively ensured that Fannie Mae could not (and still cannot) be sued in Puerto Rico or territorial courts, even though the 1954 Act specifically authorized Fannie Mae to enter into contracts with entities in Puerto Rico and the territories and to "conduct its business" there. 1954 Act [§ 308(a)], 68 Stat. 620. That statutory construct obviously makes no sense. The better explanation is that the phrase "State or Federal" was eliminated from FSLIC's statute but retained in Fannie Mae's because Congress wanted "to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

Second, the 1954 Act also omitted any specific reference to federal courts in the sue-and-be-sued clause added for the Home Loan Bank Board. Petitioners inexplicably find the Home Loan Bank Board's provision "instructive" because it authorizes suit "in any court of competent jurisdiction in the United States or its territories," while also expressly

granting federal district courts limited jurisdiction only to hold hearings and issue equitable relief. Petr. Br. 24-25 (quoting 68 Stat. 635). As petitioners understand it, if the Home Land Bank's sue-and-be-sued clause itself "conferred subject matter jurisdiction ... the express jurisdictional provision[] that Congress added would be superfluous." Petr. Br. 25.

Petitioners have it backwards. Congress did *not* confer jurisdiction through the Home Loan Bank Board's sue-and-be-sued clause because it did not authorize suit specifically in federal court, which is precisely why the separate, limited jurisdiction-conferring provision was necessary. More precisely, Congress had to omit any reference to federal courts from the sue-and-be-sued clause because otherwise it would have constituted a *general* grant of federal jurisdiction that conflicted with the *limited* grant of jurisdiction that Congress intended. The Home Loan Bank Board provision certainly is instructive, but its lesson is the opposite of petitioners' understanding.

In the end, petitioners provide no tenable explanation for why Fannie Mae's 1954 charter specifically authorizes suit in federal court, whereas FSLIC's and the Home Loan Bank Board's charters—enacted as part of the same statute—do not. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation omitted). That principle further confirms that Fannie Mae's sue-and-be-sued clause constitutes a grant of federal jurisdiction.

C. Congress Granted Federal Courts Jurisdiction Over Cases Involving Fannie Mae and Freddie Mac Due To The GSEs' Uniquely Federal Purpose

1. Congress's decision to grant federal courts jurisdiction over cases involving Fannie Mae is consistent with Fannie Mae's "special, public purpose[]," and its "special relationship with the federal government." S. Rep. No. 102-282 (1992), at 25, 34. As Congress has expressly stated, Fannie Mae has an "important public mission[]," "reflected in the statutes and charter Act[] establishing" it, to "facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with [its] overall public purposes, while maintaining a strong financial condition and a reasonable economic return." 12 U.S.C. § 4501(1), (2), (7); *see supra* at 12-13.

Despite Fannie Mae's important role in federal housing policy, petitioners insist that Congress "wanted Fannie [Mae], once privatized, to be treated as any other private entity." Petr. Br. 28. But Fannie Mae is not like "any other private entity"—it is a government-sponsored enterprise with a congressionally mandated public mission, *see supra* at 4, 12-13. It is hardly surprising that Congress would seek to protect Fannie Mae's federal mission by allowing federal courts to hear suits with the potential to affect that mission.

Indeed, Congress's actions in related contexts show that it does not consider private ownership a barrier to federal jurisdiction for entities serving important public policy objectives. For instance, Con-

gress granted federal jurisdiction over suits by and against the second Bank of the United States, *Osborn*, 9 Wheat. at 817-18, even though the Bank was 80% privately owned, Act of April 10, 1816, ch. 44, 3 Stat. 266 (preamble).

An even closer privately-owned analog is Freddie Mac, which "was established by Congress in 1970 as a private corporation to compete with Fannie Mae," *Montgomery Cty.*, 740 F.3d at 918, and which is "almost identical" to Fannie Mae in its functions and purposes, Forrester, *Forgotten Benefit*, at 1082. Congress invested both entities with materially identical powers "so neither would have any competitive advantage over the other." S. Rep. No. 91-761, 1970 U.S.C.C.A.N. 3488 at 3494; H.R. Rep. No. 91-1311 (1970), at 7. And Congress specifically established multiple grounds for jurisdiction over suits involving Freddie Mac, *see infra* at 52-53, conclusively refuting petitioners' assumption that privatization is inconsistent with special access to federal court.

2. Petitioners cannot and do not proffer any policy rationale for allowing Freddie Mac more favorable access to federal court than Fannie Mae. They instead say that the different language used in Freddie Mac's charter compels the different result. It does not, for multiple reasons.

First, and as a threshold matter, any inference from the differences in language between the Fannie Mae and Freddie Mac charters is necessarily weak, because "the two relevant provisions were not considered or enacted together." *Gomez-Perez v. Potter*, 553 U.S. 474, 486 (2008). The differences between the Fannie Mae and FSLIC sue-and-be-sued claus-

es—which *were* considered and enacted together—have obvious jurisdictional significance. *See supra* at 47-48. The Fannie Mae and Freddie Mac jurisdictional provisions—which were enacted 16 years apart—do not.

Second, because the Freddie Mac charter was written on a clean slate in 1970, *much* of its structure and text differs substantially from the Fannie Mae charter—not just the jurisdictional language. *See supra* at 11-12. Yet Congress intended, as courts have recognized, that Freddie Mac would possess essentially the same powers and functions as Fannie Mae. *See supra* at 12. The difference in the jurisdictional provisions follows the same pattern—Congress simply used different language to reach the same result. Indeed, Freddie Mac's charter includes no fewer than four provisions saying in different ways that federal courts have jurisdiction over suits involving Freddie Mac:

- Freddie Mac can "sue and be sued, complain and defend, in any State, Federal, or other court," 12 U.S.C. § 1452(c);
- Freddie Mac is "deemed to be an agency included in sections 1345 and 1442 of Title 28," *id.* § 1452(f)
- any actions to which Freddie Mac is a party "shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value," *id.*; and

- Freddie Mac may remove any suit filed against it in state court, *id.*

Congress's emphatic decision to say essentially the same thing four different ways in Freddie Mac's charter does not mean that Congress was insufficiently clear when it said the same thing once in Fannie Mae's.

There is no basis in policy or the historical record for inferring that Congress wanted the courts to treat Freddie Mac and Fannie Mae differently. To the contrary, Congress wanted them to have the same rights and obligations, so that neither would have any market advantage over the other. *See supra* at 12. Petitioners' reliance on the grants of jurisdiction in Freddie Mac charter to construe Fannie Mae's charter as not granting jurisdiction would directly undermine the overall policy equivalence Congress clearly intended.

D. Petitioners' Remaining Arguments Are Meritless

1. *The 1974 Amendment To Fannie Mae's Venue Provision Does Not Support Petitioners' Reading Of The "Sue-And-Be-Sued" Clause*

Petitioners rely on a later 1974 amendment to a different Fannie Mae-related provision, which provided that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." 12 U.S.C. § 1717(a)(2)(B); *see* Petr. Br. 35-38; SG Br. 20-21. They contend that this provision was meant to establish Fannie Mae as a D.C. "citizen," as required to give Fannie Mae access to federal courts under the

diversity-of-citizenship statute, *see* 28 U.S.C. § 1332(a), and that Congress would not have made that change if Fannie Mae already had access to federal courts under the sue-and-be-sued clause.

Even if Congress's action in 1974 could shed light on the meaning of its earlier enactment, *but cf. Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011) ("Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation."), petitioners' theory misconstrues the 1974 amendment's text, context, and history. In fact, the amendment had nothing to do with subject-matter jurisdiction.

The 1974 provision was adopted to address essentially the same D.C.-venue issued addressed in the 1954 Act. Before 1974, Fannie Mae's headquarters were required to be in the District of Columbia, and it was "deemed, for purposes of venue in civil actions, to be a resident thereof." 1954 Act [§ 302(a)], 68 Stat. 613. Fannie Mae lobbied for authority to move its headquarters outside the District, and the 1974 law granted that authority, allowing Fannie Mae to be headquartered in D.C. "or the metropolitan area thereof." 12 U.S.C. § 1717(a)(2)(B). But Congress made a conforming change to the same provision to ensure that Fannie Mae would be deemed a D.C. corporation "for purposes of jurisdiction and venue in civil actions," *id.*, even if its headquarters moved outside District boundaries. *See Bauman*, 134 S. Ct. at 754 (general personal jurisdiction over corporation in state where corporation is "at home"). The provision was not about subject-matter jurisdiction, but about keeping Fannie Mae

"at home" in D.C., wherever it might eventually reside. *Id.*; *see supra* at 12.

Petitioners' theory that the provision was actually about diversity-of-citizenship is also inconsistent with the provision's text. When Congress intends to deem a federally chartered corporation to be a "citizen" of a particular jurisdiction for diversity purposes, Congress uses the diversity term-of-art "citizen" specifically.[9] The government argues that labelling Fannie Mae a "District of Columbia corporation" achieves the same end because under the diversity-of-citizenship statute, a corporation is considered a citizen of the state "by which it has been incorporated." SG Br. 21 (quoting 28 U.S.C. § 1332(c)(1)). But Fannie Mae was not incorporated by the District of Columbia but by Congress, and if Congress wanted to ensure diversity jurisdiction despite that deficiency, it would have done what it ordinarily does and deemed Fannie Mae a "citizen" of the District. Congress's failure to do so indicates that Congress

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[9] *See, e.g.*, 7 U.S.C. § 941(c) ("The telephone bank ... shall, for the purposes of jurisdiction and venue, be deemed a citizen and resident of the District of Columbia."); 12 U.S.C. § 1464(x) ("In determining whether a Federal court has diversity jurisdiction ... the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office."); 12 U.S.C. § 2258 ("Each institution of the [Federal Farm Credit] System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located."); 28 U.S.C. § 1348 (national banking associations "deemed citizens of the States in which they are respectively located"); 47 U.S.C. § 614(b) ("The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.").

was serving some objective other than securing federal diversity jurisdiction, such as establishing venue and personal jurisdiction. According to petitioners, "if Congress intended to refer *only* to personal jurisdiction, it would not have used a word that encompasses *both* personal and subject matter jurisdiction." Petr. Br. 38 (emphasis added). But Congress had no reason to *avoid* a common term referring to both personal and subject-matter jurisdiction, especially given that federal subject-matter jurisdiction *already* existed in suits by or against Fannie Mae. So long as the term encompassed personal jurisdiction, it served Congress's objective.

Petitioners also note that the 1974 Congress did not alter Ginnie Mae's venue provision to track the changes to Fannie Mae's charter, speculating that no comparable amendment was necessary because Ginnie Mae, as a federal agency, already had the automatic access to federal courts that Fannie Mae lacked. Petr. Br. 37. The reason for the differential treatment is much simpler: no change to Ginnie Mae's venue provision was necessary because the 1974 Act did not allow Ginnie Mae to move its headquarters outside the District. Ginnie Mae to this day is required to "maintain its principal office in the District of Columbia." 12 U.S.C. § 1717(a)(2)(A).

Finally, even if the language of the 1974 amendment *did* have the effect of designating Fannie Mae a D.C. "citizen," there is no indication that this effect was anything more than incidental. It could not be more clear that the relevant amendment was adopted to permit Fannie Mae to move its headquarters

outside the District, and not to address a perceived jurisdictional imperative.[10]

2. ***Section 1349 Is Irrelevant To The Interpretive Question Here***

Petitioners contend that Fannie Mae's charter should be read in light of what they call "the default rule" Congress established in § 1349, i.e., that the "district courts shall not have jurisdiction of any civil action by or against a corporation upon the ground that it was incorporated by or under an Act of Congress." 28 U.S.C. § 1349; *see* Petr. Br. 25. That provision is inapposite here because the basis for federal jurisdiction is *not* the fact that Fannie Mae "was incorporated by or under an Act of Congress." The basis for jurisdiction instead is that Congress expressly authorized suits by and against Fannie Mae to be heard in federal courts of competent jurisdiction. Section 1349 is beside the point.

Petitioners' reliance on § 1349 is also contrary to *Red Cross*, where the Court expressly held that § 1349 was "irrelevant" to the jurisdictional effect of Red Cross's sue-and-be-sued clause. 505 U.S. at 260 n.12. The Court noted a controversy in lower courts about § 1349's application to federal entities (like the Red Cross) without any capital stock. *Id.* at 251 & n.3. Had § 1349 carried the weight petitioners place

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[10] Petitioners suggest that Fannie Mae's occasional past invocations of diversity jurisdiction establish that jurisdiction cannot be available under the sue-and-be-sued clause. Petr. Br. 37. *Red Cross* rejected the same argument. 505 U.S. at 262 n.14. And rightly so: any prudent removal petition or jurisdictional statement will identify all potentially applicable grounds for jurisdiction.

on it, the Court would have been compelled to decide whether § 1349 applied to the Red Cross before construing its sue-and-be-sued clause. But the Court instead did "not address this question," because "the 'sue and be sued' provision of the Red Cross's Charter suffices to confer federal jurisdiction independently of the organization's federal incorporation." *Id.* at 251 n.3. The same is true here.[11]

3. *The Canon Of Constitutional Avoidance Does Not Apply Here*

Finally, petitioners argue that the "imperative to avoid constitutional difficulty" counsels against construing Fannie Mae's charter as conferring jurisdiction, because that conclusion would "raise[] the thorny question whether Congress actually has the power under Article III to confer jurisdiction on the federal courts over all manner of Fannie suits, however trivial, simply because Fannie is a congressionally chartered corporation." Petr. Br. 52. But if there were ever such a "thorny question," it was definitively answered by Chief Justice Marshall almost two hundred years ago. As "long ago as *Osborn*," the Court observed in *Red Cross*, "this Court held that Article III's 'arising under' jurisdiction is broad

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[11] *Red Cross* (and every other relevant precedent) similarly forecloses petitioners' argument (Petr. Br. 20) that the sue-and-be-sued clause should not be read as a jurisdictional grant because it appears in a list of corporate powers rather than as a separate jurisdictional provision. The same was true for *every* sue-and-be-sued clause construed by this Court as conferring jurisdiction. *See* Act of May 8, 1947, Pub. L. No. 80-47, § 3, 61 Stat. 81 (Red Cross); Act of April 10, 1816, ch. 44, § 7, 3 Stat. 269 (second Bank of the United States); Banking Act of 1935, Pub. L. No. 74-305, § 101, 49 Stat. 692 (FDIC).

enough to authorize Congress to confer federal-court jurisdiction over actions involving federally chartered corporations," 505 U.S. at 264 (citing *Osborn*, 9 Wheat. at 823-28), and the Court has "consistently reaffirmed the breadth of that holding," *id.* (citing cases). The *Red Cross* Court thus concluded that "[w]e would be loath to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely." *Id.* Petitioners have offered no plausible basis for a different result here.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

BRIAN P. BROOKS
JULIE E. KATZMAN
MAI PHAM ROBERTSON
FANNIE MAE
3900 Wisconsin Ave., N.W.
Washington, D.C. 20016
(202) 752-3900

JONATHAN D. HACKER
(Counsel of Record)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036
(212) 326-2000

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CRYSTAL LIGHTFOOT
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Petitioners,

v.

CENDANT MORTGAGE CORP., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

Andrew H. Friedman
Gregory D. Helmer
HELMER FRIEDMAN, LLP
8522 National Boulevard
Suite 107
Culver City, CA 90232

E. Joshua Rosenkranz
Counsel of Record
Thomas M. Bondy
Kevin Arlyck
Matthew L. Bush
Cynthia B. Stein
Louisa Irving
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

Counsel for Petitioners

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Fair Labor Standards Act of 1938, Pub. L. No. 75-718, 52 Stat. 1060 .....20, 21

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Federal Housing and Rent Act of 1947, Pub. L. No. 80-388, 61 Stat. 193 .....21, 22

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Housing Act of 1954, Pub. L. No. 83-560, 68 Stat. 590 .....9, 12

Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476 19

Interstate Commerce Act of 1887, ch. 104, 24 Stat. 379 23

National Housing Act of 1934, Pub. L. No. 73-479, 48 Stat. 1246. ..... 14, 15

Reconstruction Finance Corporation Act, Pub. L. No. 72-2, 47 Stat. 5 (1932) 12

Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 12

War Finance Corporation Act, Pub. L. No. 65-121, 40 Stat. 506 (1918) 12

12 Fed. Reg. 4981 (July 26, 1947) 19

Legislative History

73 Cong. Rec. 11, 973 (1934) 12, 14, 15

H.R. Rep. No. 83-2271 (1954) (Conf. Rep.) 16

INTRODUCTION

Fannie's approach to statutory construction is unconventional, to say the least. Fannie urges this Court to adopt a "rule [that] obviates the need for ... scrutiny of [the] text, history, and purpose" of the provision before it. Resp. 27.[1] Fannie does not even contend that it has the better reading of the sue-and-be-sued clause in its charter—and in particular the phrase "court of competent jurisdiction." The most Fannie can muster is that this key phrase "does not *necessarily* refer to a court with independent subject-matter jurisdiction." Resp. 32 (emphasis altered).

Fannie justifies these peculiarities by insisting that this Court has for centuries followed a "rule" that the very utterance of the word "federal" in a sue-and-be-sued provision is "'sufficient' to confer federal subject matter jurisdiction." Resp. 23. But Fannie cannot quote a single sentence from any opinion that actually says this. And it does not actually defend this purported rule. Instead, it asserts that the word "federal" creates a "virtually dispositive" presumption, Resp. 16—a presumption also unjustified by traditional approaches to statutory interpretation and appearing nowhere in any precedent.

There is no reason for the Court to depart from convention here. The text is straightforward: A case involving Fannie does not belong in any particular

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[1] We cite our Brief for Petitioners, "OB," the Brief for Respondent, "Resp.," Respondent's Brief in Opposition, "Br. Opp.," and the United States' amicus brief, "U.S. Br."

"State or Federal" court, unless it is a "court of competent jurisdiction." That means, at minimum, a court that has subject-matter jurisdiction. Tellingly, Fannie cannot commit to a single reading of this phrase. Instead, it ricochets from saying it *could* mean "personal jurisdiction" to "venue" to "general jurisdiction." That is not the way one ordinarily wins a statutory construction argument.

The history of the clause is also straightforward. Contrary to Fannie's premise, Congress did not start with language that it saw as granting federal jurisdiction. It started with language that it understood to require an independent source of jurisdiction. We know that for sure, because the legislative debate definitively resolved the point when Congress enacted the statute that first provided the power to sue or be sued. Congress reaffirmed this point 20 years later, by amending Fannie's charter to make clear that Fannie can sue and be sued only in a "court of competent jurisdiction."

The text, history, and other conventional tools of statutory construction confirm that Fannie cannot be in district court—or in any other court, "State or Federal"—without satisfying the jurisdictional prerequisites for that court. That is the best reading of this statute. But even under Fannie's unconventional presumption, there is "specific, compelling evidence" that this was Congress's "intent." Resp. 29. The only reasonable conclusion is that Fannie's charter does not confer jurisdiction.

ARGUMENT

I. The Ninth Circuit Applied The Wrong Rule Of Statutory Construction, And Fannie's Alternative Presumption Is No Better.

This case presents three views of how to read a sue-and-be-sued clause in a statute. Fannie does not dispute that the Ninth Circuit adopted an "if 'federal,' then jurisdiction" rule: It looked for a single word—"federal"—and made that dispositive. While insisting that this Court has adopted this "clear rule," Resp. 22, Fannie cannot bring itself to defend it. Instead, Fannie proposes an alternative: Courts should treat that same word as a "virtually dispositive" presumption in favor of jurisdiction. Resp. 16. But neither approach has a basis in law or precedent. Instead, this Court should treat sue-and-be-sued clauses the way it does any statute: discern the best reading of the text, applying traditional tools of statutory construction. If this Court reads *Red Cross* as a command to depart from these traditional norms, it should overrule that case.

A. Both the Ninth Circuit's bright-line rule and Fannie's presumption are wrong.

While ultimately declining to defend it, Fannie purports to find the same "rule" in this Court's precedents that the Ninth Circuit did: "language authorizing suits ... specifically in federal court *suffices* to establish federal jurisdiction over such suits." Resp. 22 (emphasis altered). Fannie's argument rests almost entirely on the premise that "this Court has recognized" this rule "for centuries." Resp. 22.

As we have already demonstrated, this Court has never said, much less held, that a reference to federal court "suffices" to establish jurisdiction. OB 43-47. Fannie is unable to quote a single sentence from any of this Court's cases saying so. Instead, Fannie stitches together a few words from each opinion, filling in critical gaps with its own language. Resp. 23-25. For example, Fannie describes *Osborn* as holding that a "*reference to suit* specifically 'in every Circuit Court of the United States' *sufficed to* 'confer[] jurisdiction on the Circuit Courts of the United States.'" Resp. 24 (emphasis added). But the crucial terms—"reference to suit" and "sufficed"—are Fannie's, not this Court's.

Even starker is Fannie's surgery on *Red Cross*. Fannie claims that *Red Cross* held that "when the '*sue and be sued*' provision specifically authorized suit in federal courts, rather than in courts generally, the authorization was '*sufficient*' to confer federal subject matter jurisdiction." Resp. 23 (emphasis added). Those two quoted phrases—"sue and be sued" and "sufficient"—are separated by 50 words in this Court's opinion. 505 U.S. 247, 252 (1992). None of them say anything about "specifically authorizing suit in federal court." *See* OB 41-42.

Ultimately, Fannie concedes that a faithful application of the bright-line rule the Ninth Circuit articulated leads to "absurdity." Resp. 28. Specifically, a charter explicitly authorizing suit in "federal court" does not confer jurisdiction when it indicates that an independent basis for jurisdiction is required. That would be "nonsensical." *Id.* In other words, Fannie concedes that this Court's precedents mean that the

term "federal court" is a *necessary* condition for conferring jurisdiction, but not a *sufficient* one, just as we argue.

For good reason—that is what this Court said in *Red Cross*: "[T]he *rule* [is] that a congressional charter's 'sue and be sued' provision *may* be read to confer federal court jurisdiction *if, but only if*, it specifically mentions the federal courts." 505 U.S. at 255 (emphasis added). Fannie does not dispute that the plain meaning of *this* rule is that a court "may," but need not, read a sue-and-be-sued clause referring to federal courts as conferring jurisdiction.

So Fannie tries a different tack: Even if the word "federal" is not dispositive, its presence in a sue-and-be-sued clause should be presumed to grant federal jurisdiction "absent specific, compelling evidence that Congress had a different intent." Resp. 29. The reference to federal courts, Fannie insists, is "virtually dispositive." Resp. 16.

Of course, this presumption is also made up. This Court has never said anything about a presumption in this context, much less a "virtually dispositive" one. Nor does Fannie offer a principled justification for such a presumption—just that it "obviates the need for ... scrutiny of every charter's text, history, and purpose." Resp. 27. But "scrutiny" of a statute's "text" in light of "history" and "purpose" is not a vice to be "obviate[d]." It is the time-honored approach to statutory construction, and Fannie offers no reason to reject it. Nothing in this Court's cases suggests that the "text" of these statutes does not matter or that "his-

tory" and "purpose" are no longer relevant to understanding the text. The rule in this context—as in all instances of statutory construction—is that the Court's function is to discern the *best* reading of the statute, applying all the traditional tools of statutory construction.

B. If this Court reads *Red Cross* as rejecting settled norms of statutory construction, it should overrule the case.

If this Court reads *Red Cross* as adopting the Ninth Circuit's categorical rule or Fannie's substitute presumption, this Court should overrule it. A rule that departs so significantly from the norms that this Court has consistently applied is not worthy of stare decisis.

Although stare decisis "has more force in statutory analysis than in constitutional adjudication," this Court has "never applied [it] mechanically to prohibit overruling ... earlier decisions." *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 695 (1978). This Court has "explicitly overruled statutory precedents in a host of cases." *Patterson v. McLean Credit Union*, 485 U.S. 617, 618 (1988) (per curiam) (collecting cases). And Fannie does not dispute that these sue-and-be-sued provisions involve a "rule of procedure that does not alter primary conduct," such that "[t]he role of *stare decisis*" is "reduced." *Hohn v. United States*, 524 U.S. 236, 251-52 (1998).

Accordingly, this Court should not allow the decision in *Red Cross* to stand in the way of interpreting Fannie's charter in accord with its text and history.

II. The Text And History Of Fannie's Sue-And-Be-Sued Clause Make Clear That It Confers Capacity To Sue, Not Jurisdiction.

If this Court takes a traditional approach to interpreting Fannie's charter, the outcome cannot be in doubt. The plain text of the sue-and-be-sued clause grants Fannie nothing more than the capacity to bring suit (or be sued) in state and federal courts that otherwise have jurisdiction. But we also prevail under Fannie's presumption, as the charter's text and history supply "specific, compelling evidence" that Congress did not intend it to confer jurisdiction—including an explicit disavowal of Fannie's reading on the Senate floor. This conclusion is reinforced by comparing Fannie's charter to Freddie Mac's.

A. The text limits jurisdiction rather than granting it.

1. We start with the text—a topic Fannie puts off until page 29 of its brief. Fannie concedes that the charter "obviously" would not grant federal jurisdiction if it said: "Fannie Mae may sue and be sued in federal court only if another statute independently confers subject-matter jurisdiction." Resp. 28 (quoting OB 40). But that is essentially what the clause says (rearranging only to conform to natural diction): "[Fannie] shall have power ... to sue and to be sued ... in any court ... State of Federal," only if it is a "court of competent jurisdiction." The latter phrase is most naturally read to mean what this Court has long recognized it to mean: a court that has an "outside source[] of jurisdictional authority." *Califano v. Sanders*, 430 U.S. 99, 106 n.6 (1977); *see* OB 21-22. Even

Fannie acknowledges this Court's view that the phrase "a court of 'competent jurisdiction' [is] usually used to refer to subject-matter jurisdiction." *United States v. Morton*, 467 U.S. 822, 828 (1984); *see* Br. Opp. 25. If Congress's intention was to communicate that federal courts have automatic jurisdiction over any suit involving Fannie, it was not at all natural to limit the text with a requirement that any federal court must be a "court of competent jurisdiction."

Fannie repeatedly argues that a "court of competent jurisdiction" "does not *necessarily* refer to a court with independent subject-matter jurisdiction." Resp. 32 (emphasis altered); *see* Resp. 31, 33 n.4, 39. One cannot ordinarily prevail by demonstrating that the text Congress chose "does not necessarily" mean what it seems to say. One must prove a better reading, and Fannie notably does not suggest its reading is superior as a matter of plain English.

Instead, Fannie cycles through a series of possible alternative meanings. But while purporting to "give[] clear meaning to the phrase 'court of competent jurisdiction,'" Resp. 32, Fannie refuses to commit to any one reading. The reason is that none of Fannie's alternatives is sensible.

Fannie starts by positing that the term "*can* in context refer to a court with personal jurisdiction." Resp. 33 (emphasis added). But Congress knows how to specify "personal jurisdiction" if it wants. *See, e.g.*, 28 U.S.C. § 1330; *id.* § 2467; 48 U.S.C. § 2166. And Fannie never explains why Congress would have thought it necessary to specify that personal jurisdiction was required. It's always required. *See Int'l Shoe*

Co. v. Washington, 326 U.S. 310, 316 (1945). Moreover, that cannot logically be what it means here. Just plug in Fannie's proposed meaning and you get: Congress vested jurisdiction "in any court with personal jurisdiction, State or Federal." That is obviously wrong. The Court of Federal Claims and state courts in Texas (where Fannie has a major office) both have personal jurisdiction over Fannie. But Congress could not have intended that they would have subject-matter jurisdiction over *this* suit, as a natural reading of Fannie's alternate language would require.

So Fannie shifts to the suggestion that "court of competent jurisdiction" refers to "venue." That too makes no sense. First, Congress also knows how to say "venue." Second, plug in Fannie's words, and you get: Congress vested jurisdiction "in any court of proper venue, State or Federal." Venue for this suit likely would be fine in Los Angeles traffic court, but Congress cannot grant that court subject-matter jurisdiction. Third, Fannie's argument for why Congress would have focused on venue is incoherent. Fannie contends that Congress sought to cure a "potential conflict" with a provision designating Fannie a District of Columbia resident "for purposes of venue in civil actions." Resp. 44 (quoting Housing Act of 1954). Fannie hypothesizes that Congress thought this "conflicted with the then-existing sue-and-be-sued clause, which allowed suit in '*any* court of law or equity.'" *Id.* That is highly unlikely, and in any event Fannie does not explain how substituting "*any* court of competent jurisdiction" solved the problem.

Thus, Fannie shifts again: Maybe "court of competent jurisdiction" "mean[s] that an action may be

maintained in a court of *general jurisdiction* whether federal, state or territorial." Resp. 34 (internal quotation marks omitted); *see* Resp. 44 & n.6. Congress allegedly wanted to avoid "implicating the Court of Claims' exclusive jurisdiction" over certain types of suits. Resp. 42-43. But once again, Fannie offers zero evidence Congress actually had this concern, and it is doubtful it would have chosen this remedy if it had.[2] Moreover, inserting a phrase meaning "general jurisdiction" would mean that the suit could *only* be brought in such a court (since the charter grants no power to appear anywhere else). So Fannie cannot

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[2] Fannie's argument is premised entirely on two 1940s Court of Appeals cases holding that the Court of Claims did not have exclusive jurisdiction over suits against the Federal Housing Administration and two related agencies. *See* Resp. 39-41(citing *George H. Evans & Co. v. United States*, 169 F.2d 500, 502 (3d Cir. 1948) and *Ferguson v. Union Nat'l Bank of Clarksburg*, 126 F.2d 753, 755-57 (4th Cir. 1942)). Contrary to Fannie's suggestion, the courts' conclusion had nothing to do with the fact that the FHA was empowered to "sue and be sued in any court of competent jurisdiction." 12 U.S.C. § 1702. Nor did the courts clearly hold that this provision otherwise conferred jurisdiction on the district courts. As the Government explains, the courts may have believed that jurisdiction was proper because the controversies arose under federal law. U.S. Br. 31. And many courts—including the Third Circuit—have since held that § 1702 does *not* confer jurisdiction. *See Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174, 181 (8th Cir. 1978) (citing *Reconstruction Fin. Corp. v. MacArthur Mining Co.*, 184 F.2d 913 (8th Cir. 1950)); *Lindy v. Lynn*, 501 F.2d 1367, 1368 (3d Cir. 1974); *C.H. Sanders Co. v. BHAP Hous. Dev. Fund Co.*, 903 F.2d 114, 118 (2d Cir. 1990); *Indus. Indem., Inc. v. Landrieu*, 615 F.2d 644, 647 (5th Cir. 1980). It is therefore unlikely that Congress had these cases in mind when it inserted "of competent jurisdiction" into Fannie's charter.

bring a huge contract claim against the federal government in the Court of Federal Claims or fight a parking ticket in traffic court? That cannot be.

Perhaps to address this problem, at times Fannie shifts to the vague assertion that "court of competent jurisdiction" is designed "to ensure that suit is brought in the *proper federal court*," *e.g.*, Resp. 22 (emphasis added), or the "appropriate federal court," *e.g.*, Resp. 3. But that interpretation fails as well, because "proper court" doesn't tell us anything. What is a "proper court," if not a court that meets all (not some) of the jurisdictional requirements (personal and subject matter)? In the end, Fannie cannot escape the plain fact that "of competent jurisdiction" is best read to mean "with an independent source of subject-matter jurisdiction."

2. Fannie's only other textual argument concerns the phrase "State or Federal." It argues that "[i]f Congress wanted to eliminate the jurisdictional grant" in Fannie's charter, it would have deleted that phrase, rather than inserting "court of competent jurisdiction." Fannie adds that, "under petitioners' theory, Congress simply left the phrase in ... with the intention that it do no work." Resp. 2. Fannie is wrong on both counts.

The first argument depends on the assumption that Congress believed the charter had a jurisdictional grant to "eliminate" in 1954. As we demonstrate below (§ II.B), that is not the case. But even accepting the premise, "omit[ting] the word 'Federal' from the statute" was not the only—or even the most natural—way to achieve that goal, Resp. 47 (citation

omitted), for reasons we have already explained, OB 28-29, 31-32.[3]

Fannie is also incorrect that our reading "renders the words 'State or Federal' superfluous." Resp. 31. As the chair of the Senate subcommittee responsible for the original charter language explained, "the reason for using the words 'State or Federal'" is that this was "the language usually used in setting up corporations." 73 Cong. Rec. 11,973, 12,008 (1934). In that era, the phrase was ubiquitous in sue-and-be-sued clauses. *See, e.g.*, Pub. L. No. 65-121, § 6, 40 Stat. 506, 507 (1918) (War Finance Corporation); Pub. L. No. 72-2, § 4, 47 Stat. 5, 6 (1932) (Reconstruction Finance Corporation); Pub. L. No. 72-304, § 12, 47 Stat. 725, 735 (1932) (Federal Home Loan Banks); Pub. L. No. 73-22, § 203, 48 Stat. 74, 93 (1933) (Corporation of

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[3] Fannie similarly falls short in arguing that "State or Federal" must be a grant of jurisdiction because Congress did not include that phrase in other 1954 amendments. Resp. 47-49. For example, Fannie cites no case holding that FSLIC's pre-1954 charter conferred jurisdiction, such that removing "State or Federal" was jurisdictionally meaningful. HLBB's charter did not even have a sue-and-be-sued clause before 1954, so the absence of "State or Federal" in the amendment is even less noteworthy. *See* 12 U.S.C. § 1464(d) (1952). Far more important (for reasons already discussed, OB 23-25), Congress *added* language providing that the district courts "shall have jurisdiction" over specific HLBB suits—strong evidence that Congress would have used similarly direct language had it wanted to confer federal jurisdiction in Fannie's charter. Housing Act of 1954, Pub. L. No. 83-560, § 503(2), 68 Stat. 590, 635. In any event, both clauses *did* authorize suit in all courts state or federal; they just used slightly different formulations, authorizing HLBB, for example, to "sue and be sued ... in any court of competent jurisdiction in the United States or its territories." *Id.*

Foreign Security Holders); Pub. L. No. 73-43, § 4(a), 48 Stat. 128, 129 (1933) (Home Owners' Loan Corporation); Pub. L. No. 73-66, § 8, 48 Stat. 162, 172 (1933) (FDIC).

In any event, contrary to Fannie's assertion, Congress might well have thought that mentioning both "State and Federal" courts served an important purpose. Referring to state courts would make clear that the sue-and-be-sued clause waived sovereign immunity in those courts. *See Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, 580 (1946); *Minnesota v. United States*, 305 U.S. 382, 388-89 (1939). And once Congress specified state courts, it would have needed to specify federal courts too, lest it leave the impression that it was intentionally omitting federal courts from the waiver.

B. The charter's history confirms that the sue-and-be-sued clause does not grant jurisdiction.

Instead of starting with the text, Fannie starts with a fallacy: that Congress "inarguably gave Fannie Mae access to the federal courts" in its original charter. Resp. 30 (internal quotation marks omitted). Fannie then adds a second mistake: that Congress did not definitively reject that reading of Fannie's charter when it added the "of competent jurisdiction" limitation in 1954. Resp. 31. We address each in turn.

1. Fannie starts its account of the sue-and-be-sued clause's history in 1938. Resp. 29. But the story actually begins in 1934, when Congress first authorized the creation of national mortgage associations in

the National Housing Act. That was where Congress first declared that these associations would have the power "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." Pub. L. No. 73-479, § 301(c), 48 Stat. 1246, 1253. In that same statute, Congress provided that a national mortgage association like Fannie would be "deemed a citizen of the State in which its principal office is located." *Id.* As Fannie acknowledges, "citizen" is a "diversity term-of-art." Resp. 55. This specification would have been meaningless if the sue-and-be-sued clause automatically conferred federal jurisdiction.

There is additional "specific, compelling evidence," Resp. 29, that Congress did not intend the sue-and-be-sued clause to grant jurisdiction. During the floor debate about this provision, Senator Logan worried that "the words 'State or Federal'" in the clause might be read as "conferring upon these corporations the right to go into the Federal courts although the matter may be purely a State matter." 73 Cong. Rec. at 12,008. Senator Bulkley, the chairman of the subcommittee responsible for the bill, assured him that this interpretation "was not so intended." *Id.* Instead, he explained, "this part of the bill is merely prescribing the corporate capacity, and *not conferring a right to go into a Federal court where it would not otherwise exist.*" *Id.* (emphasis added).

As if to anticipate the very argument Fannie makes here, Senator Logan restated his concern, predicting: "Some one [*sic*] will claim that the bill gives the right to go into the Federal court when otherwise there would be no right." *Id.* Senator Bulkley reas-

sured him again by pointing to the Reconstruction Finance Corporation's charter, which contained "the same provision referring specifically to State or Federal courts." *Id.* "I do not think," Senator Bulkley assured his colleague, "it has been interpreted as a specific right to get Federal jurisdiction. *It is intended merely as a designation of corporate capacity.*" *Id.* With that, Senator Logan was satisfied—if the language meant only that "the association may go into the Federal courts if the facts justify it," he found it "unobjectionable." *Id.* "That is what it is intended to mean," Senator Bulkley confirmed for a third time. *Id.* Less than two weeks later, Congress passed the Act, with the clause's language unchanged. 48 Stat. at 1253.

2. Given how Congress understood the original sue-and-be-sued clause, Fannie is wrong to couch the inquiry in this case as to whether "the 1954 amendment to Fannie Mae's charter ... *transformed* the sue-and-be-sued clause from a grant of jurisdiction to a mere grant of general corporate capacity." Resp. 31 (emphasis added). But even if, contrary to Senator Bulkley's assurances, the original language could be properly read as a grant of federal jurisdiction, the 1954 amendment squarely negated any such inference—by specifying that Fannie could sue and be sued only in courts "of competent jurisdiction."

As our opening brief explains (at 27-29), Congress likely added this phrase for two complementary reasons. First, in 1942, this Court's opinion in *D'Oench, Duhme & Co. v. FDIC* suggested that language in the FDIC's charter similar to Fannie's pre-existing charter language might confer jurisdiction. *See* 315 U.S.

447, 455 (1942). *But cf.* OB 45-47 (explaining that this reading of *D'Oench* is mistaken). Fannie ignores this fact entirely.

The second reason is that, by 1954, Congress wanted to ensure that, once privatized, Fannie would enjoy no special access to the federal courts. OB 27-29. Fannie concedes that Congress set it on the path to privatization in 1954. Resp. 45. But it argues that the result would not have effected an immediate change in Fannie's jurisdictional status "absent further legislation," because Fannie was still "a federal 'agency'" amenable to federal jurisdiction. Resp. 45-46 (emphasis omitted).

Fannie misses the point. Because Congress knew that the transition would occur "gradually," H.R. Rep. No. 83-2271, at 81 (1954) (Conf. Rep.), there was no urgency in removing all plausible grants of jurisdiction at once. As Fannie acknowledges (at 45 n.7), Congress eliminated Fannie's status as an agency—and therefore the only remaining basis of automatic jurisdiction—before privatization was complete.

3. Another 20 years later, in 1974, Congress again confirmed that Fannie's sue-and-be-sued clause does not confer jurisdiction, by amending Fannie's charter to ensure that general diversity jurisdiction principles would apply to suits involving Fannie. OB 35-37. As in 1934, doing so would have been pointless if the federal courts already had automatic jurisdiction over Fannie.

Fannie's attempt to explain away this fact is unavailing. It first contends that 12 U.S.C.

§ 1717(a)(2)(B) is irrelevant because it does not use the word "citizen." Resp. 54-55. That is yet another "magic words" test—and one that the 1934 version passes easily. *See supra* 13-14. Moreover, that nuance has not prevented every other court that has considered the question from concluding that § 1717(a)(2)(B) establishes Fannie's citizenship for purposes of diversity jurisdiction. OB 37-38. Fannie ignores those cases, and cites none to the contrary.

Fannie also does not deny that *it* has cited § 1717(a)(2)(B) as establishing its citizenship for diversity jurisdiction. Contrary to its protestations, Resp. 57 n.10, it has repeatedly invoked § 1717(a)(2)(B) as the *only* ground for jurisdiction, including at least six times since we filed our opening brief in this case.[4]

Fannie fares no better in arguing that the 1974 amendment reveals nothing about the sue-and-be-sued clause because "[p]ost-enactment legislative history" is "not a legitimate tool of statutory interpretation." Resp. 54 (quoting *Bruesewitz v. Wyeth LLC*, 562

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[4] Notice of Removal at 2-3, *Witte v. Fed. Nat'l Mortg. Ass'n*, 4:16-cv-03052 (S.D. Tex. Oct. 14, 2016), Dkt. 1; Notice of Removal at 2, *McFerren v. Fed. Nat'l Mortg. Ass'n*, 5:16-cv-02365-JRA (N.D. Ohio Sept. 23, 2016), Dkt. 1; Notice of Removal at 2, *Brunzos v. Nationstar Mortg., LLC*, 1:16-cv-00513-S-PAS (D.R.I. Sept. 13, 2016), Dkt. 1; Notice of Removal at 2-3, *Elzein v. Fed. Nat'l Mortg. Ass'n*, 2:16-cv-13185-AC-RSW (E.D. Mich. Sept. 2, 2016), Dkt. 1; Notice of Removal at 2, *Putty v. Fed. Nat'l Mortg. Ass'n*, 3:16-cv-02562-D (N.D. Tex. Sept. 7, 2016), Dkt. 1; Notice of Removal at 4-5, *Van Dyk v. Quicken Loans, Inc.*, 2:16-cv-05463-ES-SCM (D.N.J. Sept. 8, 2016), Dkt. 1.

U.S. 223, 242 (2011)). That statement is about "legislative history"—specifically, a committee report. The 1974 amendment was actual legislation that amended the very charter at issue here. This Court has "repeatedly recognized" that, unlike post-enactment legislative history, "subsequent *legislation* reflecting an interpretation of an earlier Act *is entitled to great weight* in determining the meaning of the earlier statute." *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 349 (1978) (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part) (emphasis added); *see South Carolina v. Regan*, 465 U.S. 367, 378 n.17 (1984).

C. Comparing Fannie's charter to Freddie's confirms that it is not a grant of automatic federal jurisdiction.

Our opening brief presents Freddie's charter as a textbook illustration of how Congress grants jurisdiction when that is what it intends. OB 24. Fannie agrees, noting "Congress's emphatic decision" to expressly confer jurisdiction in multiple different ways in Freddie's charter. Resp. 52-53. Fannie admits that its own charter does none of these things. Resp. 53.

Fannie asserts that any inference arising from this difference "is necessarily weak, because the two relevant provisions were not considered or enacted together." Resp. 51 (internal quotation marks omitted). But on the next page, Fannie insists that "Congress intended ... that Freddie Mac would possess essentially the same powers and functions as Fannie Mae." Resp. 52. So surely the drafters were looking at Fannie's charter when drafting Freddie's.

In an odd reversal of the normal rules of statutory construction, Fannie faults us for "focus[ing] on differences in Freddie Mac's [and Fannie's] charter language" without "identify[ing] any policy reason Congress would have wanted Freddie Mac to have greater access to federal courts than Fannie Mae." Resp. 20. But when Congress chooses language that treats two similar entities differently, its textual choice is operative even when unexplained.

In any event, there *is* an explanation for the differential treatment. When Congress created Freddie, it specified that Freddie's board of directors would be composed of members of the Federal Home Loan Bank Board, Pub. L. No. 91-351, § 303(a), 84 Stat. 450, 452 (1970), an independent agency whose members were appointed by the President, 12 U.S.C. § 1437(b) (1970); Reorganization Plan 3 of 1947, 12 Fed. Reg. 4981 (July 26, 1947). And Congress had already indicated that the Board itself had special access to federal jurisdiction. *See* 12 U.S.C. § 1425b(c) (1970); OB 24-25. By contrast, under the 1968 amendments pertaining to Fannie, a controlling two-thirds of its board was to be elected by private shareholders. Pub. L. 90-448, § 802(y), 82 Stat. 476, 539 (1968). Congress could readily have seen Freddie as having a more "uniquely federal purpose" than Fannie. Resp. 50 (bold omitted).

III. Unrelated Statutes Do Not Alter The Plain Meaning Of Fannie's Charter.

Fannie devotes large swaths of its brief (at 34-39) to a discussion of various unrelated statutory provisions, in an effort to demonstrate that, under certain

circumstances, the phrase "of competent jurisdiction" *could* be compatible with a congressional grant of jurisdiction. But none of the provisions clearly confers jurisdiction, and even if they did, none is a sue-and-be-sued clause. So they are of limited utility in determining what Fannie's charter means.

A. Fannie starts with § 216(b) of the Fair Labor Standards Act (FLSA), which created a cause of action under federal law to recover unpaid wages. Resp. 34-36. At the relevant time (before 1954), that provision said that such suits "may be maintained in any court of competent jurisdiction." 29 U.S.C. § 216(b) (1952). Fannie maintains that this Court has held that § 216(b) granted jurisdiction to the federal courts—and Congress would have expected similar language in Fannie's charter also to be jurisdictional.

For support, Fannie cites a single sentence in *Williams v. Jacksonville Terminal Co.*, 315 U.S. 386 (1942). That is not what *Williams* held. Rather, it stated in passing that "[j]urisdiction of the action was conferred by [the predecessor to 28 U.S.C. § 1337], *and* by § 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b)." 315 U.S. at 390 (emphasis added). The former provided that district courts had jurisdiction over actions arising under statutes regulating commerce. Read most naturally, all *Williams* held was that suit was properly brought in federal court because § 216(b) provided a cause of action in *any* "court of competent jurisdiction" (not specifically federal court) and § 1337's predecessor provided "competent" federal jurisdiction. Notably, Fannie does not dispute that "it is 'unclear' whether *Williams* actually held that § 216(b) constituted an independent grant

of jurisdiction." Resp. 34-35 (emphasis omitted); *see* U.S. Br. 29 n.3. That being so, Congress cannot be presumed to have adopted the view that the language it used in an unrelated provision, for a different purpose, must be read that way.[5]

Even if § 216(b) were properly construed as a jurisdictional provision, it does not follow that the same must be true of Fannie's charter. It is easier to argue that Congress conferred jurisdiction by referring to federal court in a provision creating a specific cause of action than it is to reach the same result regarding a clause merely conferring capacity to sue. *See Red Cross*, 505 U.S. at 269-70 (Scalia, J., dissenting).

B. Next up is § 205 of the Federal Housing and Rent Act of 1947, Resp. 37-38, but it actually disproves Fannie's position. Much like the FLSA provision at issue in *Williams*, § 205 provided a cause of action to enforce statutory rights. And also like the FLSA provision, the original version of § 205 provided that any such claim could be brought "in any Federal, State, or Territorial Court of competent jurisdiction." Pub. L. No. 80-388, 61 Stat. 193, 199. Again, Fannie maintains that Congress understood this language to be a grant of jurisdiction, and would have read Fannie's sue-and-be-sued clause the same way.

To the contrary, at the time Congress incorporated similar language into Fannie's charter, the

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[5] Fannie also cites a 2003 case, *Breuer v. Jim's Concrete of Brevard, Inc.*, which has no bearing on what Congress thought in 1954 and, like *Williams*, merely identified an alternate basis for jurisdiction. 538 U.S. 691, 694 (2003).

lower courts had split on whether § 205 operated as a grant of jurisdiction. While some courts held that it did, others held that the provision authorized only suits that had some *other* jurisdictional basis. *See, e.g.*, *Fields v. Washington*, 173 F.2d 701, 702-03 (3d Cir. 1949). In the latter camp, that meant that some colorable claims did not meet 28 U.S.C. § 1331's then-existing amount-in-controversy requirement and would not be heard at all. *See id.* at 703. Congress solved the problem a few years later by amending the statute to allow suit "in any Federal court of competent jurisdiction *regardless of the amount involved*." Defense Production Act Amendments of 1951, Pub. L. No. 82-96, § 205(c), 65 Stat. 131, 147 (emphasis added).

Contrary to Fannie's contention, this history does not show that Congress knew that the words "federal" plus "of competent jurisdiction" signaled automatic federal jurisdiction. Just the opposite: It shows that, just three years before the 1954 amendment, Congress understood that those words would *not* do the trick by themselves. Instead, ordinary jurisdictional rules applied, and to allow for jurisdiction it had to explicitly plug the gap in § 1331 jurisdiction.

C. Finally, Fannie cites a series of statutes—passed both before and after 1954—authorizing actions to enforce federal law (mainly by federal agencies) *exclusively* in federal court. Resp. 36-37, 38-39. There is no basis to read these statutes as grants of jurisdiction, or to believe Congress viewed them that way, because federal jurisdiction always existed for each, either under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1337 (regulation of commerce), or 28

U.S.C. § 1345 (suits by agencies). *See, e.g., United States v. Norwood Capital Corp.*, 273 F. Supp. 236, 238-39 (D.S.C. 1967) (jurisdiction over suit by the Small Business Administration is proper under § 1345 and 15 U.S.C. § 687(d)).

Fannie seems to think that Congress must have believed the provisions enacted before 1954 conferred jurisdiction because, at that time, § 1331 had an amount-in-controversy requirement. Resp. 36-37. As we have just seen, when Congress wants to eliminate that requirement, it generally does so explicitly. *See supra* 22. And Fannie offers no evidence that Congress believed that any of the pre-1954 provisions conferred jurisdiction, nor any opinion of this Court interpreting them as such. For example, *Pennsylvania Railroad Co. v. Puritan Coal Mining Co.* held only that § 9 of the Interstate Commerce Act excludes state courts from asserting jurisdiction, 237 U.S. 121, 128-29 (1915); federal courts already had jurisdiction under 28 U.S.C. § 1337.

Even if Congress did think these provisions conferred jurisdiction, the same would not be true of Fannie's charter. In those statutes, Congress created substantive rights and deemed them enforceable *only* in federal court. In that circumstance, it might be appropriate to posit that Congress intended every suit it authorized to be brought in federal court; otherwise, Congress would have authorized suits with no forum. *Cf. Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 520-23 (1990).

Fannie's charter is entirely different: It provides no substantive federal rights—only the capacity to

sue and be sued—and allows any lawsuit that does not belong in federal court to be brought in state court. There is therefore no good reason to read Fannie's charter as Fannie suggests, and many reasons not to.

CONCLUSION

The Court should reverse the decision of the Ninth Circuit.

Respectfully submitted,

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

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No. 14-1055

IN THE

Supreme Court of the United States

CRYSTAL LIGHTFOOT, ET AL.,
Petitioners,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036
(212) 326-2000

JONATHAN D. HACKER
(*Counsel of Record*)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

Attorneys for Respondent

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ARGUMENT

The Solicitor General's brief in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), correctly recognized that this Court's decisions since at least 1824 have "established a clear rule that congressional charters provide for original jurisdiction in the federal courts whenever they specifically grant a right to sue and be sued in federal courts." Br. for United States as Amicus Curiae Supporting Pet'rs, *Am. Nat'l Red Cross v. S.G.* (No. 91-594), 1992 U.S. S. Ct. Briefs LEXIS 115, at *5-6. This Court reaffirmed that "basic rule," *Red Cross*, 505 U.S. at 257, and every court of appeals to have considered the question since then has held that Fannie Mae's sue-and-be-sued clause (and other identically worded provisions) grants federal jurisdiction because it authorizes Fannie Mae to "sue and to be sued ... in any court of competent jurisdiction, State *or Federal*," 12 U.S.C. § 1723a(a) (emphasis added). *See* Pet. App. 21a; *Fed. Home Loan Bank of Boston v. Moody's Corp.*, __ F.3d __, 2016 WL 1732656, at *4 (1st Cir. May 2, 2016); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust ex rel. Fed. Nat'l Mortg. Ass'n v. Raines*, 534 F.3d 779, 784 (D.C. Cir. 2008).

The Solicitor General has now abandoned the clear rule he successfully urged this Court to adopt in *Red Cross*. But his brief, if anything, confirms the case *against* certiorari.

1. To start, the Solicitor General admits (U.S. Br. 18-19) that since *Red Cross*, every appellate court to confront the question has held that under "the *Red Cross* rule," a federal charter's "sue and be sued" provision creates federal jurisdiction when it "ex-

pressly refers to the federal courts in a manner similar to the Red Cross statute." *Pirelli*, 534 F.3d at 784; *see* Pet. App. 7a-8a (when "federal charters, like those of the Red Cross and of Fannie Mae, 'expressly authoriz[e] the organization to sue and be sued in federal courts ... the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction'" (alteration and omission in original)). The First Circuit adopted the same view unanimously, just last month. *See Moody's Corp.*, 2016 WL 1732656, at *4 ("We see no principled reason why *Red Cross*'s rule should not apply in the same way to the Bank's charter as the *Lightfoot* and *Pirelli* majorities found it applied to Fannie Mae's," "and we agree with the Ninth Circuit that the additional phrase, 'of competent jurisdiction,' does not take away that jurisdiction").

Contrary to the Solicitor General's submission (U.S. Br. 17-18), it is irrelevant that some decisions *pre*-dating *Red Cross* had adopted a contrary position. *Red Cross* resolved the dispute involved in those earlier decisions, which is why every court of appeals *since Red Cross* has recognized that the earlier cases were simply incorrect. *E.g.*, Pet. App. 14a. And it is obviously no answer to say that the pre-*Red Cross* conflict remains relevant because *Red Cross* "does not control" here (U.S. Br. 19)—the whole *question* is whether the *Red Cross* rule applies to language like that appearing in Fannie Mae's charter, as all appellate courts thus far have ruled. When at least one appellate court proffers a different answer to that question, this Court can consider whether to intervene and resolve the disagreement. Until then, as always, the lack of circuit-level disa-

greement "weighs strongly against a grant of certiorari." U.S. Br. 19.

Unable to identify a pertinent circuit conflict, the Solicitor General urges review based on disagreement among *district courts*. *Id.* But as the Solicitor General usually recognizes, "this Court does not ordinarily grant review to resolve conflicts among district courts." Br. for U.S. in Opp. to Cert., *Amy v. Monzel* (No. 11-85), 2011 WL 4963245, at *12 n.4 (citing Sup. Ct. R. 10(a)). The courts of appeals are, of course, fully capable of resolving conflicts among the district courts, and they have been doing just that through the recent, uniform decisions cited above. The consistent pattern of circuit decisions will likely suffice to bring district court decisions into line as well. If not, and if sufficient controversy appears likely to persist, the Court can intervene at that time.

The Solicitor General also errs in suggesting (U.S. Br. 19) that district court disagreement is especially relevant here because a remand for lack of jurisdiction is not appealable under 28 U.S.C. § 1447(d). That concern has not prevented three different circuits from exercising jurisdiction and addressing the issue. Many other circuits will have the same opportunity—numerous district courts in other circuits have accepted jurisdiction based on Fannie Mae's charter and denied remand motions, *see* Pet. 18-19, which will permit appellate review of the jurisdictional question after final judgment.

2. The Solicitor General's brief also confirms that this case is not an appropriate vehicle for considering the district court's jurisdiction, because petition-

ers *cannot actually challenge that court's jurisdiction*, no matter how this Court resolves the question presented, as respondent has argued. Opp. 27-29.

The Solicitor General agrees with respondent that this case arises as an appeal from the denial of a Rule 60(b) motion. U.S. Br. 20-21; Opp. 27-29. According to the Solicitor General, that posture explains why respondent *could* have raised a res judicata objection to the exercise of jurisdiction, *viz.*, that subject matter jurisdiction had already been finally (and preclusively) determined by the final judgment being attacked under Rule 60(b). U.S. Br. 20-22. The Solicitor General appears to believe that if respondent had raised res judicata below, certiorari would be futile and therefore unwarranted.

The Solicitor General has it half right. There is indeed a barrier to relief here, but it derives from *Rule 60(b)*, rather than res judicata, as the very authority cited by the Solicitor General makes clear. *See* 18A Charles Alan Wright et al., *Federal Practice & Procedure* § 4428 (2d ed. 2002). As this Court has enunciated the rule, federal courts permit relief from judgment under Rule 60(b) based on an asserted jurisdictional defect "only [in] the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). There is of course *at least* an "arguable basis" for jurisdiction here, given the decisions of three courts of appeals and numerous district courts. Accordingly, the Solicitor General's acknowledgment of the Rule 60(b) posture of this case supports respondent's argument that an exercise of certiorari jurisdiction here would be an exercise in futility. Opp. 28.

The Solicitor General also offers no answer to the undisputed fact that there is *no* possibility that petitioners could prevail on the merits—they have filed *five* frivolous and essentially identical complaints in state and federal court, and the district court's dismissal of those claims on collateral estoppel and res judicata grounds (Opp. 7-9) was undoubtedly correct. Thus, even if this case were remanded, it would be promptly dismissed by the state court.

It is obviously true that jurisdiction is "a threshold question that must be resolved ... before proceeding to the merits," Pet. Reply 10 (quotation omitted), but that only means that this Court would have to resolve the jurisdictional question raised in the petition *if it granted certiorari*. Neither petitioners nor the Solicitor General can explain why this Court should expend its limited resources on facially meritless cases, i.e., cases where there is no possibility that the answer to the jurisdictional question will affect the ultimate outcome.

3. Finally, the entire premise of the Solicitor General's case for review is wrong—there is no error in the D.C., Ninth, and now First Circuit decisions that the *Red Cross* rule resolves the question here.

a. In *Red Cross*, this Court recognized "the basic rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it *specifically mentions the federal courts*." *Red Cross*, 505 U.S. at 255 (emphasis added). Under this clear and administrable rule, when a federal charter explicitly authorizes the chartered entity "to sue and be sued in federal courts," the provision "extends beyond a mere grant

of general corporate capacity to sue" and "suffices to confer federal jurisdiction." *Id.* at 257. That rule resolves this case, because Fannie Mae's charter authorizes it "to sue and be sued in federal courts." *Id.*

b. The Solicitor General rejects the application of that clear rule here because of the language in Fannie Mae's sue-and-be-sued clause allowing suit in "*any court of competent jurisdiction*, State or Federal." According to the Solicitor General, the underscored phrase "suggests that the charter does not provide an independent basis for federal (or state) jurisdiction." U.S. Br. 11.

The Solicitor General is incorrect. As an initial matter, his reading conflicts with this Court's construction of a substantively identical Fair Labor Standards Act ("FLSA") provision, which states that an FLSA suit "may be maintained ... in any Federal or State *court of competent jurisdiction*." 29 U.S.C. § 216(b) (emphasis added). In *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003), this Court held that the provision itself establishes federal jurisdiction over the suit, *id.* at 694, with no suggestion that the phrase "court of competent jurisdiction" requires an independent basis for subject matter jurisdiction.[1]

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[1] Although an action under the FLSA *also* would implicate federal question jurisdiction under 28 U.S.C. § 1331, the Court in *Breuer* held that § 216(b) *itself* sufficed to establish jurisdiction, and that § 1331 merely provided a separate, *alternative* jurisdictional basis for suit. 538 U.S. at 694 (after observing that § 216(b) itself created jurisdiction, adding that "the district courts would *in any event* have original jurisdiction over FLSA claims under 28 U.S.C. § 1331" (emphasis added)).

The Solicitor General's position also ignores *Red Cross*—including the government's brief submitted in that case—and the 150 year history on which this Court relied establishing that what matters is whether the corporation's charter specifically allows it to sue and be sued *in federal courts*, which Fannie Mae's charter undoubtedly does. Congress could of course alter that rule (or Fannie Mae's charter) at any time, yet it has done neither since 1954, when the Fannie Mae sue-and-be-sued clause took its present form.

c. Finally, the Solicitor General misreads the history of Fannie Mae's charter, which confirms the *Red Cross* rule. The Solicitor General does not and could not deny that before 1954, Fannie Mae's sue-and-be-sued clause *did* independently create federal jurisdiction, because it allowed suit "in any court of *law or equity*, State or Federal." U.S. Br. 15 (quotation omitted; emphasis added). The only question is whether Congress, by amending this provision in 1954 to replace the italicized language with the words "in any court of competent jurisdiction," intended to silently alter the sue-and-be-sued clause's jurisdictional character. That inference is not plausible, for several reasons.

First, contemporaneous appellate caselaw had interpreted materially identical language as conferring subject matter jurisdiction. *See, e.g.*, *Ferguson v. Union Nat. Bank of Clarksburg, W. Va.*, 126 F.2d 753, 756 (4th Cir. 1942) ("no question but that the court had jurisdiction" under provision allowing administrator to "sue and be sued in any court of competent jurisdiction, State or Federal" (quotation omitted)); *George H. Evans & Co. v. United States*,

169 F.2d 500, 502 (3d Cir. 1948) (same). Congress would not have employed the same language to have the exact opposite effect.

Second, since *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), this Court itself has "placed Congress on prospective notice of the language necessary and sufficient to confer jurisdiction," *Red Cross*, 505 U.S. at 252—i.e., Congress must say that the entity is authorized to sue *in federal court*. Congress accordingly would have known that, to alter the jurisdiction-conferring power of Fannie Mae's charter, it needed only to eliminate the reference to "Federal" court. Indeed, the Solicitor General does not mention it, but Congress *did exactly that in the same Act that amended Fannie Mae's charter*—Congress deleted the word "Federal" from the "sue-and-be-sued" provision of the Federal Savings and Loan Insurance Corporation ("FSLIC") statute. Pub. L. No. 83-560, § 501(1), 68 Stat. 590, 633 (1954) (amending Pub. L. No. 73-479, § 402(c)(4), 48 Stat. 1246, 1256 (1934)). "The fact that Congress chose to keep that all-important word in the Fannie Mae statute but to delete it from the FSLIC statute is compelling evidence that Fannie Mae's 'sue-and-be-sued' provision was meant to ensure continuing federal jurisdiction in Fannie Mae cases." *Pirelli*, 534 F.3d at 787.

Third, there is a sound practical explanation for *why* Congress replaced "court of law and equity" with "court of competent jurisdiction"—it "served the purpose of eliminating an anachronistic reference to courts of law and equity," just as "Congress had recently done in other statutes." Pet. App. 10a, 12a. As shown above, Congress would not reasonably

have believed that adding the phrase "court of competent" would have eliminated subject matter jurisdiction, given recent appellate authority. *See supra* at 7-8. To the contrary, given this Court's own then-recent precedent, Congress surely would have understood the phrase "court of competent jurisdiction" as confirming the requirement of *personal* jurisdiction. Just two years before the 1954 amendment, this Court interpreted the term "court of 'competent jurisdiction'" in a federal entity's corporate charter as assuring that suit could only be brought against the entity where there was *personal* jurisdiction, i.e., "that review must be in that district where the [defendant] can be served." *Blackmar v. Guerre*, 342 U.S. 512, 516 (1952). Congress obviously had that simple but important principle rule in mind in using the same phrase in the 1954 amendment—not a sub silentio intent to eliminate the jurisdictional effect of Fannie Mae's sue-and-be-sued clause.

Fourth, the Solicitor General expressly admits (U.S. Br. 16) that the amendment did *not* actually have any jurisdictional effect in 1954, because Fannie Mae was at the time still majority-owned by the government, and thus 28 U.S.C. § 1349 would have independently created federal jurisdiction over suits by and against Fannie Mae. According to the Solicitor General, the jurisdiction-stripping effect of the 1954 amendment would spring into action only in the hypothetical, future event that Fannie Mae became fully private. U.S. Br. 16-17. "When Congress acts to amend a statute," however, "it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995). Under respondent's reading of the 1954 amendment—unlike

the Solicitor General's reading—the amendment *did* have full and immediate effect: Congress jettisoned anachronistic "law and equity" language and assured that Fannie Mae's charter did not deviate from normal rules of personal jurisdiction and venue. And again, this non-jurisdictional reading is consistent with the "basic rule" of *Red Cross*, whereas the Solicitor General's reading flouts that rule.

Fifth, the Solicitor General, like the dissent below, relies on a *later* 1974 amendment to a *different* Fannie Mae-related provision, which provided that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." U.S. Br. 13 (quoting 12 U.S.C. § 1717(a)(2)(B)). The Solicitor General contends that this provision was meant to establish Fannie Mae as a D.C. *citizen*, as required to give Fannie Mae access to federal courts under the diversity-of-citizenship statute. *See* 28 U.S.C. § 1332(a) (defining diversity jurisdiction in terms of citizenship).

As the court of appeals majority explained, however, the "legislative history strongly suggests that the amendment was intended to allow Fannie Mae to move its principal place of business to the suburbs without effecting any change to the place where it would be subject to general jurisdiction." Pet. App. 20a (citing and quoting history). The Solicitor General does not answer or even respond to this argument. And the Solicitor General offers no reason to conclude that the 1974 amendment was meant to establish Fannie Mae as a D.C. *citizen* for diversity purposes, rather than simply establish D.C. as its

corporate home for personal jurisdiction and venue purposes.

Indeed, when Congress means to deem a federally chartered corporation to be a "citizen" of a particular state (or D.C.) for diversity purposes, it says so explicitly. 7 U.S.C. § 941(c) ("The telephone bank ... shall, for the purposes of jurisdiction and venue, be deemed a *citizen* and resident of the District of Columbia." (emphasis added)); 28 U.S.C. § 1348 ("All national banking associations shall, for the purposes of all other actions by or against them, be deemed *citizens* of the States in which they are respectively located." (emphasis added)). Congress's decision to avoid the "citizenship" language that most likely would implicate diversity of *citizenship* indicates that Congress was seeking to serve objectives other than ensuring federal jurisdiction—after all, Fannie Mae's sue-and-be-sued clause *already* ensured federal jurisdiction under the longstanding *Red Cross* rule.

Sixth, and finally, the Solicitor General cannot explain why Congress would want to provide Fannie Mae with *less* access to federal courts than Freddie Mac, which may "sue and be sued, complain and defend, in any State, Federal, or other court." 12 U.S.C. § 1452(c)(7). On the Solicitor General's theory, the absence of the "of competent jurisdiction" phrase establishes federal jurisdiction for suits by and against Freddie Mac under *Red Cross*, whereas the presence of the phrase in Fannie Mae's otherwise-comparable provision strips the provision of any jurisdictional effect whatsoever. But it is difficult to see why Congress would have wanted Fannie Mae treated so differently. From its outset through to-

day, Fannie Mae has played a central role in federal housing policy. Opp. 2-5. There is no sound policy reason Congress would have thought Fannie Mae should have less access to federal courts in performing that role than Freddie Mac, and hence no sound reason to reject the straightforward reading of the "of competent jurisdiction" phrase adopted by every appellate court to have considered it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ANTON METLITSKY
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, N.Y. 10036
(212) 326-2000

JONATHAN D. HACKER
(*Counsel of Record*)
jhacker@omm.com
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

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In the Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, ET AL., PETITIONERS

v.

CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

EDWIN S. KNEEDLER
Deputy Solicitor General
Counsel of Record
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the charter of the Federal National Mortgage Association (Fannie Mae), which authorizes Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), confers original jurisdiction on federal courts over all cases to which Fannie Mae is a party.

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In the Supreme Court of the United States

No. 14-1055

CRYSTAL MONIQUE LIGHTFOOT, ET AL., PETITIONERS

v.

CENDANT MORTGAGE CORPORATION, DBA PHH MORTGAGE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case presents the question whether the charter of the Federal National Mortgage Association (Fannie Mae), which authorizes Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), vests federal courts with original jurisdiction over all cases to which Fannie Mae is a party. Nearly identical language appears in the sue-and-be-sued clauses of the Department of Housing and Urban Development, 12 U.S.C. 1702, and the Department of Veterans Affairs, 38 U.S.C. 3720. Although those agencies are authorized by statute to bring suit in federal court, see 28 U.S.C. 1345, and to remove suits filed in state court, see 28 U.S.C. 1442(a), resolution of the question presented would determine whether private litigants may file

suit against those agencies in federal court based on state-law causes of action. Accordingly, the United States has a substantial interest in the question whether Fannie Mae's charter provides an independent grant of jurisdiction to the federal courts. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. In 1934, in the midst of the Great Depression, Congress enacted the National Housing Act, ch. 847, 48 Stat. 1246 (12 U.S.C. 1701 *et seq.*), to help resuscitate the nation's housing market and protect lenders from mortgage default. That law created the Federal Housing Administration (FHA), which is now part of the Department of Housing and Urban Development (HUD). The following year, concerns over whether banks could bring suit against FHA led Congress to enact a provision authorizing FHA (and now HUD) "to sue and be sued in any court of competent jurisdiction, State or Federal." Banking Act of 1935, ch. 614, Tit. III, § 344(a), 49 Stat. 722 (12 U.S.C. 1702); see *Korman* v. *Federal Hous. Adm'r*, 113 F.2d 743, 746 & n.15 (D.C. Cir. 1940).

The National Housing Act also contemplated that FHA would establish independent "national mortgage associations" that would enter the secondary-mortgage market. § 301(a), 48 Stat. 1252. The associations were designed to "promote access to mortgage credit throughout the Nation." 12 U.S.C. 1716(4). The National Housing Act authorized such associations "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." § 301(c)(3), 48 Stat. 1253.

The Federal National Mortgage Association (Fannie Mae) was chartered by FHA in 1938 as a national

mortgage corporation owned entirely by the federal government. Fed. Nat'l Mortg. Ass'n, *Circular No. 1*, at 1 (Apr. 15, 1938); HUD, *Background and History of the Federal National Mortgage Association* 7-9, A4 (Jan. 31, 1966). As provided in Section 301(c)(3) of the National Housing Act, Fannie Mae then had the power "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." See also Act of July 1, 1948, ch. 784, § 1, 62 Stat. 1206 (amending Title III of the National Housing Act regarding Fannie Mae). In 1954, Congress converted Fannie Mae into a mixed-ownership corporation, meaning that the federal government held its preferred stock and private investors held its common stock. Housing Act of 1954, ch. 649, Tit. II, § 201 [§ 303], 68 Stat. 613; see Pet. App. 34a. Congress also revised the statement of Fannie Mae's general powers, providing, *inter alia*, that Fannie Mae could sue and be sued "in any court *of competent jurisdiction*, State or Federal." Housing Act of 1954, § 201 [§ 309(a)], 68 Stat. 620 (emphasis added). That change rendered the language in Fannie Mae's charter identical to the language that applied to FHA. Compare 12 U.S.C. 1723a(a) (Fannie Mae), with 12 U.S.C. 1702 (FHA).

In 1968, Congress split Fannie Mae into two separate corporations: Fannie Mae and the Government National Mortgage Association (Ginnie Mae). See Housing and Urban Development Act of 1968 (1968 Act), Pub. L. No. 90-448, Tit. VIII, 82 Stat. 536. Fannie Mae, which was converted into a privately held corporation, purchases conventional mortgages. Ginnie Mae, which is wholly owned by the government and housed within HUD, guaranties the timely payment of principal and interest on mortgage-backed

securities that are secured by pools of government home loans. Ginnie Mae's sue-and-be-sued clause is the same as Fannie Mae's. See 12 U.S.C. 1723a(a).

Before 1974, both Fannie Mae and Ginnie Mae were required to "maintain [their] principal office[s] in the District of Columbia" and were "deemed, for purposes of venue in civil actions, to be * * * resident[s] thereof." 1968 Act § 802(c)(3)(A) and (B), 82 Stat. 536-537. In 1974, Congress enacted new language that required Fannie Mae to maintain its principal office in the District of Columbia "or the metropolitan area thereof" and provided that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Housing and Community Development Act of 1974, Pub. L. No. 93-383, Tit. VIII, § 806(b), 88 Stat. 727 (12 U.S.C. 1717(a)(2)(B)).

2. a. In July 2002, following foreclosure on their home, petitioners filed suit in state court against respondents Cendant Mortgage Corporation (which had financed the mortgage), Fannie Mae (which had purchased the loan but then sold it back to Cendant), Attorneys Equity National Corporation (which had become trustee for the property), and Robert Matthews (the current property owner). Fannie Mae removed the case to the United States District Court for the Central District of California on the basis of its sue-and-be-sued clause, Pet. App. 45a-49a, and petitioners unsuccessfully sought a remand to state court, *id.* at 43a-44a. Petitioners appealed, but the Ninth Circuit noted that "the order challenged in the appeal is not final or appealable." 02-56586 Order (Oct. 11, 2002).

In February 2003, the district court dismissed the suit as to Cendant, Fannie Mae, and Matthews—but not as to Attorneys Equity—on the basis of res judicata because petitioners had already filed two suits unsuccessfully challenging the foreclosure. D. Ct. Doc. 59 (Feb. 20, 2003).[1] Petitioners appealed, but the Ninth Circuit dismissed the appeal "because the order challenged in the appeal is not final or appealable." 03-55389 Order (Apr. 11, 2003).

In the district court, petitioners moved unsuccessfully for a default judgment against Attorneys Equity and to set aside the judgment as to Cendant, Fannie Mae, and Matthews. D. Ct. Doc. 78, 79 (Aug. 29, 2003). Petitioners appealed, and the Ninth Circuit summarily affirmed the district court's judgment without receiving a response brief and without discussing whether the judgment being appealed was final. 03-56580 Mem. (Dec. 15, 2003). Petitioners filed a petition for a writ of certiorari, which this Court denied. *Hollis-Arrington* v. *Cendant Mortg. Corp.*, 543 U.S. 918 (2004) (No. 03-10177).

b. After filing an unsuccessful mandamus petition in the court of appeals, see 08-73461 Order (Nov. 3, 2008), petitioners returned to the district court. Petitioners moved for entry of a final judgment under Federal Rule of Civil Procedure 54, noting that the court had not previously issued a final judgment that included Attorneys Equity. D. Ct. Doc. 92 (Apr. 7, 2009). An attorney who had formerly represented Attorneys Equity explained that the corporation had become defunct. D. Ct. Doc. 97, at 2 (May 18, 2009).

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[1] All district court docket references are to Case No. 02-cv-6568 (filed Aug. 22, 2002).

In October 2009, the district court entered judgment in favor of Cendant, Fannie Mae, and Matthews on the basis of its prior order granting their motions to dismiss; the court did not enter judgment with respect to Attorneys Equity. D. Ct. Doc. 99 (Oct. 21, 2009). Petitioners filed another mandamus petition in the Ninth Circuit, asking the court of appeals to direct the district court to enter judgment with respect to Attorneys Equity. The Ninth Circuit denied the petition without prejudice to the filing of a new petition if the district court did not enter a final judgment with respect to Attorneys Equity within 60 days. 09-74079 Order (Apr. 14, 2010).

c. In June 2010, the district court issued an order dismissing the action with prejudice against Attorneys Equity on the basis of res judicata. D. Ct. Doc. 103, 104 (June 11, 2010). That same day, petitioners moved under Federal Rule of Civil Procedure 60(b) to set aside the judgments—which by now had been granted in favor of all defendants—based on allegations of "fraud upon the court." D. Ct. Doc. 105, at 1. The district court denied the motion, finding it untimely as to Cendant, Fannie Mae, and Matthews, and without merit as to all defendants. D. Ct. Doc. 117 (Sept. 27, 2010).

On appeal, the Ninth Circuit summarily affirmed the district court's judgment dismissing petitioners' action and denying their Rule 60(b) motion. 465 Fed. Appx. 668. Petitioners sought rehearing, and in April 2012 the court of appeals *sua sponte* withdrew its prior opinion and denied the rehearing petition as moot. The court requested briefing on the question "whether the district court had subject matter jurisdiction on the basis of the federal charter of the Fed-

eral National Mortgage Association." 10-56068 Order (Apr. 13, 2012).

3. a. A divided panel of the Ninth Circuit affirmed the district court's judgment. Pet. App. 3a-40a.

The court of appeals held that Fannie Mae's charter "confers federal question jurisdiction over claims brought by or against Fannie Mae." Pet. App. 5a. The court relied primarily on this Court's decision in *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992) (*Red Cross*), which addressed a similar question with respect to the Red Cross's sue-and-be-sued clause. That clause authorizes suit by or against the Red Cross "in courts of law and equity, State or Federal, within the jurisdiction of the United States." 36 U.S.C. 2 (1988). Drawing on its prior opinions stretching back to 1809, the Court concluded in *Red Cross* that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255. The court of appeals concluded that, under *Red Cross*, Fannie Mae's sue-and-be-sued clause, which also mentions the federal courts, similarly provides an independent basis for federal jurisdiction. Pet. App. 8a.

Petitioners argued that a different result was warranted because Fannie Mae's sue-and-be-sued clause, unlike that of the Red Cross, refers to "any *court of competent jurisdiction*, State or Federal." 12 U.S.C. 1723a(a) (emphasis added). The court of appeals rejected that contention. The court noted that the italicized phrase was added in 1954 to replace the phrase "court of law or equity," and it found no indication in the legislative history that Congress had intended for that amendment to strip federal jurisdiction over suits

by or against Fannie Mae. Pet. App. 8a-11a. The court stated that, "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the House or Senate to have said something if they intended a change of that sort." *Id.* at 10a.

In the court of appeals' view, "the most likely explanation for replacing the phrase 'court of law or equity' with 'court of competent jurisdiction' is that Congress was * * * modernizing Fannie Mae's charter" by eliminating the antiquated reference to "court of law or equity." Pet. App. 10a. The court noted that in 1948, in response to the elimination of the law/equity distinction from the Federal Rules of Civil Procedure, "Congress removed a number of references to 'law or equity' in the statutes defining federal district court jurisdiction." *Ibid.*

The court of appeals further noted that in 1954 (the year Congress amended Fannie Mae's charter), Congress had eliminated federal jurisdiction for the Federal Savings and Loan Insurance Corporation (FSLIC) by deleting language in its charter that had authorized suit "in any court of law or equity, State or Federal" and replacing it with language authorizing suit "in any court of competent jurisdiction in the United States." Pet. App. 12a (citations omitted). The court reasoned that, "[s]ince eliminating the reference to federal courts in the FSLIC amendment eliminated federal question jurisdiction over FSLIC suits brought under its sue-and-be-sued clause, Congress had no reason also to insert the phrase 'court of competent jurisdiction' to accomplish the same thing." *Ibid.*

The court of appeals rejected the argument that its holding "render[ed] superfluous the phrase 'court of

competent jurisdiction.'" Pet. App. 12a. The court explained that, in the 1950s, there was a general concern "about the extent of federal authority to require state courts to hear cases brought pursuant to federal statutes." *Id.* at 13a (citing *Testa* v. *Katt*, 330 U.S. 386 (1947)). The court reasoned that adding the phrase "court of competent jurisdiction" "emphasize[d] that the clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction" (such as a family court or small-claims court), or by a federal court of specialized jurisdiction (such as a bankruptcy court). *Id.* at 12a-13a. Having concluded that Fannie Mae's charter "confers federal question jurisdiction over suits in which Fannie Mae is a party," the court of appeals affirmed the district court's dismissal of petitioners' claims "for the reasons stated in [its] previous unpublished disposition" and denied relief under Rule 60(b). *Id.* at 21a.

b. Judge Stein dissented. Pet. App. 21a-40a. He explained that, unlike the Red Cross's charter, Fannie Mae's sue-and-be-sued clause "contains a proviso—the phrase 'of competent jurisdiction.'" *Id.* at 22a. In Judge Stein's view, the majority's constructions of that phrase "effectively render[] the proviso superfluous." *Ibid.* He concluded that, "[w]ith the proviso included, Fannie Mae's sue-and-be-sued clause does not confer automatic federal subject matter jurisdiction over any action to which Fannie Mae is a party; jurisdiction must arise from some other source." *Ibid.*

Judge Stein explained that the Court in *Red Cross* had adopted a "default rule" that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it spe-

cifically mentions the federal courts." Pet. App. 24a (quoting *Red Cross*, 505 U.S. at 255). He observed that, because it is a default rule, Congress can draft exceptions to it. *Id.* at 25a. Judge Stein explained that, "[o]n its face, the phrase 'of competent jurisdiction' 'looks to outside sources of jurisdictional authority.'" *Id.* at 26a (brackets omitted) (quoting *Califano* v. *Sanders*, 430 U.S. 99, 106 n.6 (1977)). He concluded that "[n]o court—state or federal—is competent to hear a suit involving Fannie Mae unless it has subject matter jurisdiction by some means other than Fannie Mae's sue-and-be-sued clause." *Ibid.*

Judge Stein found the majority's explanation for the phrase "court of competent jurisdiction"—that it was added to modernize the United States Code by eliminating antiquated references to courts of law and equity—unpersuasive. He noted that where Congress had eliminated such references in other provisions of the United States Code, it had simply deleted the language, whereas in Fannie Mae's charter, Congress had replaced it with "court of competent jurisdiction." Pet. App. 29a & n.3. Judge Stein was also unpersuaded by the majority's view that Congress had amended the statute to emphasize that state and federal courts of specialized jurisdiction need not hear cases involving Fannie Mae on the basis of its sue-and-be-sued clause. *Id.* at 30a. In his view, even if that phrase had been omitted, the sue-and-be-sued clause would not reasonably have been construed to authorize private plaintiffs to sue Fannie Mae in state or federal courts of specialized jurisdiction. *Id.* at 31a (citing *Red Cross*, 505 U.S. at 256 n.8).

Judge Stein also observed that, although the legislative history did not specifically explain the purpose

of the 1954 amendment, "the non-jurisdictional reading of the 1954 [amendment] meshes comfortably with Congress' overall intention when enacting the Housing Act of 1954," which was "to put Fannie Mae on a path that would eventually take the federal government out of the secondary mortgage market." Pet. App. 35a-36a. He explained that, "[a]s part of this process, Congress removed Fannie Mae's jurisdiction-granting sue-and-be-sued clause and elected the default option for federally chartered corporations —that they do not automatically gain access to the federal courts, unless the government owns more than half of the corporation's capital stock." *Id.* at 36a; see 28 U.S.C. 1349. Judge Stein also pointed to the 1974 amendment to Fannie Mae's charter, which directs that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Pet. App. 38a (emphasis omitted) (quoting 12 U.S.C. 1717(a)(2)(B)). He reasoned that, if Congress had intended for Fannie Mae's charter to confer federal jurisdiction in all suits, there would have been no need to give Fannie Mae D.C. citizenship for purposes of diversity jurisdiction. *Id.* at 38a-39a.

SUMMARY OF ARGUMENT

A. Fannie Mae's charter does not vest federal courts with original jurisdiction over all cases to which Fannie Mae is a party. This Court has long recognized that Congress may use a federally chartered entity's sue-and-be-sued clause to create federal jurisdiction. In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), Congress synthesized its decisions on this subject into the following principle: "[A] congressional charter's 'sue and be sued' provision

may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. The Red Cross's charter, which the Court held was sufficient to confer federal jurisdiction, authorized that entity "to sue and be sued in courts of law and equity, State or federal, within the jurisdiction of the United States." *Id.* at 248 (citation omitted). Although Fannie Mae's charter mentions the federal courts, it differs in a critical respect from the language at issue in *Red Cross* because it limits its authorization to courts "of competent jurisdiction."

The natural meaning of that phrase suggests that the charter authorizes Fannie Mae to sue or be sued in any court for which some *other* jurisdictional basis exists. That conclusion is reinforced by Congress's addition in 1974 of a provision specifying that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." 12 U.S.C. 1717(a)(2)(B). That provision is most naturally read to refer to both personal and subject-matter jurisdiction, and Congress would have had no reason to specify Fannie Mae's corporate citizenship for purposes of diversity jurisdiction if Fannie Mae already had plenary access to the federal courts.

B. 1. Relying primarily on *Red Cross*, the court of appeals concluded that Fannie Mae's charter confers federal jurisdiction because it contains the word "federal." The Court in *Red Cross* did not treat the mention of federal courts as dispositive, however, but instead compared the Red Cross's charter to other sue-and-be-sued clauses that the Court had previously evaluated. Fannie Mae's charter differs significantly from those clauses because it authorizes suit only in courts "of competent jurisdiction."

The 1954 amendment to Fannie Mae's sue-and-be-sued clause was part of a larger statute that transformed Fannie Mae's relationship to the federal government by converting it to a mixed-ownership corporation and providing for the eventual substitution of private capital for government investment. By adding the phrase "of competent jurisdiction" to Fannie Mae's sue-and-be-sued clause, Congress ensured that suits by and against Fannie Mae could continue to be filed in federal court pursuant to 28 U.S.C. 1349, but only so long as the government's ownership of Fannie Mae's stock continued to exceed one-half. Once majority ownership passed to private hands, suits involving Fannie Mae could be brought in federal court only if some independent ground of federal jurisdiction existed.

The court of appeals believed that Congress most likely amended Fannie Mae's charter to modernize it by eliminating outdated reference to courts of law and equity. Although that might explain why Congress removed those references, it does not explain why Congress added the phrase "court of competent jurisdiction." Nor does Congress's different treatment of the FSLIC's sue-and-be-sued clause—adding the phrase "court of competent jurisdiction" *and* removing the reference to federal courts—compel respondents' reading of Fannie Mae's charter. Whatever the reason for the different amendments, Congress's use of two different mechanisms to eliminate federal jurisdiction from the FSLIC's sue-and-be-sued clause is not a reason to ignore the addition of the phrase "court of competent jurisdiction" to Fannie Mae's charter.

2. Contrary to respondents' argument, petitioners' reading of Fannie Mae's charter does not conflict with the Court's decision in *Breuer* v. *Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003). The Court in that case had no occasion to decide whether 29 U.S.C. 216(b), which provides that a suit under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, "may be maintained against any employer * * * in any Federal or State court of competent jurisdiction," vested the district courts with original jurisdiction over such suits, and the Court did not discuss its distinct line of precedents addressing sue-and-be-sued clauses. Nor do the two pre-1954 court of appeals decisions cited by respondents specifically address whether the sue-and-be-sued clause at issue there (for suits against the Federal Housing Administrator) provided district courts with subject-matter jurisdiction.

Respondents also suggest that the phrase "court of competent jurisdiction" in Fannie Mae's charter refers to personal jurisdiction. Although that phrase may reinforce the natural inference that the court in a suit involving Fannie Mae must identify some independent ground for exercising personal jurisdiction over the defendant, there is no basis for construing the phrase to refer *only* to personal jurisdiction. Respondents are likewise wrong in arguing that the different level of access to federal courts given to Freddie Mac creates an anomaly. Quite apart from the differences between the two entities' sue-and-be-sued clauses, Congress has enacted additional provisions whose practical effect is to confer federal jurisdiction over all suits involving Freddie Mac without enacting comparable statutory provisions with respect to Fannie Mae.

ARGUMENT

Fannie Mae is authorized to sue or be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Within that provision, the phrase "court of competent jurisdiction" is properly construed to refer only to courts for which some *independent* grant of subject-matter jurisdiction exists.

A. Fannie Mae's Charter Does Not Provide District Courts With Original Jurisdiction Of Suits Brought By Or Against Fannie Mae

1. a. Congress has given the federal district courts original jurisdiction of suits brought by federal agencies, 28 U.S.C. 1345, and has authorized federal agencies to remove to federal court suits that are filed in state court, 28 U.S.C. 1442(a)(1). Congress has further provided that certain federally created entities, such as the Federal Home Loan Mortgage Corporation (Freddie Mac), shall be deemed to be federal agencies for jurisdictional and removal purposes. 12 U.S.C. 1452(f). Pursuant to such provisions, many federally created entities may insist that suits brought by or against themselves will be adjudicated in federal court, even when those suits assert state rather than federal causes of action.

In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), this Court held that Congress's grant of jurisdiction to district courts in suits "arising under" federal law encompassed all suits by or against federally chartered entities. *Id.* at 11. Such entities were therefore entitled to file a suit in, or to remove a state-court suit to, federal court on the theory that the suit arose under the laws of the United States. In 1925, however, Congress limited the scope of that "arising under" jurisdiction by providing that district courts

would not "have jurisdiction of any [civil] action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, * * * [unless] the United States is the owner of more than one-half of its capital stock." Act of Feb. 13, 1925, ch. 229, § 12, 43 Stat. 941 (28 U.S.C. 1349).

Congress has not authorized Fannie Mae to invoke Section 1345 to bring suit in federal court or Section 1442 to remove suits filed against it in state court. Fannie Mae's status as a federally chartered entity likewise does not provide an independent ground for federal jurisdiction because the government does not own more than one-half of Fannie Mae's capital stock. See 28 U.S.C. 1349. Federal jurisdiction in this suit, which raises only state-law claims and which Fannie Mae removed to federal court on the basis of the sue-and-be-sued clause in its charter, Pet. App. 45a-49a, therefore turns on whether Fannie Mae's charter provides an independent source of federal jurisdiction.

b. This Court has long recognized that Congress may use a federally chartered entity's sue-and-be-sued clause to create federal jurisdiction. In *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), the Court held that a clause allowing the Bank of the United States to sue and be sued "in all State Courts having competent jurisdiction, and in any Circuit Court of the United States," conferred federal jurisdiction. *Id.* at 817. In *Bankers Trust Co.* v. *Texas & Pacific Railway Co.*, 241 U.S. 295 (1916), by contrast, the Court held that a federal charter permitting a railroad to sue and be sued "in all courts of law and equity within the United States" did not confer federal jurisdiction because it did not specifically mention the federal courts. *Id.* at 303-305 (citation

omitted). And in *D'Oench, Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U.S. 447 (1942), the Court recognized jurisdiction based on an authorization to sue or be sued "in any court of law or equity, State or Federal." *Id.* at 455 (citation omitted).

In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), the Court synthesized those decisions and others to arrive at the following principle: "[A] congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.* at 255. At issue in *Red Cross* was a clause that authorized the Red Cross "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States." *Id.* at 248 (quoting Act of Jan. 5, 1905, ch. 23, § 2, 33 Stat. 600 (as amended at 36 U.S.C. 2 (1988))). Because the Red Cross's charter "authoriz[ed] the organization to sue and be sued in federal courts, using language resulting in a 'sue and be sued' provision in all relevant respects identical to" the provision found to confer federal jurisdiction in *D'Oench, Duhme*, the Court held that the charter "suffice[d] to confer federal jurisdiction." *Id.* at 257.

2. a. Fannie Mae's charter authorizes it to sue and be sued "in any court of competent jurisdiction, State or Federal." 12 U.S.C. 1723a(a). Although it mentions the federal courts, that provision differs in a critical respect from the language at issue in *Red Cross* by limiting its authorization to courts "of competent jurisdiction." That phrase suggests that the charter does not provide an independent basis for federal (or state) jurisdiction, but simply authorizes Fannie Mae to sue or be sued in any court for which some *other* jurisdictional basis exists. Cf. *Califano* v. *Sand-*

ers, 430 U.S. 99, 106 n.6 (1977) (explaining that 5 U.S.C. 703, which authorizes judicial review "in a court specified by statute" or "in a court of competent jurisdiction," does not appear to function "as an independent jurisdictional foundation," since "[b]oth of these clauses seem to look to outside sources of jurisdictional authority"); *Ex parte Phenix Ins. Co.*, 118 U.S. 610, 617 (1886). To construe Fannie Mae's charter more expansively would deprive the phrase "of competent jurisdiction" of its most natural meaning.

The court of appeals reasoned that the phrase "of competent jurisdiction" would not become superfluous under its interpretation because the phrase can be read as "emphasiz[ing] that the [sue-and-be-sued] clause did not authorize or require the exercise of subject matter jurisdiction by a state court with narrow, specialized jurisdiction." Pet. App. 12a-13a. In the court's view, the phrase makes clear that state courts of specialized jurisdiction (such as family courts and small-claims courts) and specialized federal courts (such as bankruptcy courts) "need not entertain suits that do not satisfy those courts' jurisdictional requirements." *Id.* at 13a-14a. That analysis is unpersuasive.

The court of appeals' explanation for the relevant language assumes that a sue-and-be-sued clause *without* the phrase "of competent jurisdiction" could plausibly be read to create jurisdiction in specialized state or federal courts. As explained above, however, the phrase "of competent jurisdiction" does not appear in the charters of the Red Cross or a number of other federally created entities. The Court in *Red Cross* did not suggest, and it is farfetched to suppose, that suits by or against such entities can be brought in specialized state or federal courts without regard to the

jurisdictional prerequisites that would otherwise apply. See 505 U.S. at 256 n.8; Pet. App. 31a (Stein, J., dissenting).[2]

To be sure, statutory language may serve a useful purpose even if it simply confirms what would in any event be the most natural reading of the relevant law. But the court below identified no textually plausible reading of the phrase "court of competent jurisdiction" that would exclude specialized state or federal courts while allowing state-law suits like this one to be brought in (or removed to) federal district court. To the extent that the phrase "of competent jurisdiction" serves to eliminate any possible inference that suits involving Fannie Mae may be filed in a state family court, it does so by making clear that Fannie Mae may

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[2] For its contrary conclusion, the court of appeals relied on *Testa* v. *Katt*, 330 U.S. 386 (1947). See Pet. App. 13a-14a. The Court in *Testa* addressed whether Rhode Island's state courts had permissibly declined to entertain a private suit under the federal Emergency Price Control Act of 1942, ch. 26, 56 Stat. 23, which gave state and federal courts concurrent jurisdiction over such suits and authorized certain private parties to sue "in any court of competent jurisdiction." 330 U.S. at 387 & n.1. Noting that "this same type of claim arising under Rhode Island law would be enforced by that State's courts," this Court held that Rhode Island's state courts were courts of competent jurisdiction and that they could not decline to hear the suit merely because of its federal nature. *Id.* at 394. Nothing in *Testa* suggests, however, that specialized state courts would have been required to entertain suits under the Emergency Price Control Act if that law had not specified that such claims must be brought in a court "of competent jurisdiction." Cf. *Howlett* v. *Rose*, 496 U.S. 356, 372 (1990) ("When a state court refuses jurisdiction because of a neutral state rule regarding the administration of the courts, [this Court] must act with utmost caution before deciding that it is obligated to entertain the claim."); *id.* at 372-375.

sue and be sued only in a court that is *otherwise* vested with jurisdiction over a particular case. Yet the court of appeals held that the present suit could be heard in federal district court even though respondents had identified no independent basis for district-court jurisdiction apart from the sue-and-be-sued clause itself.

b. The conclusion that Fannie Mae's charter does not itself create federal jurisdiction is reinforced by Congress's addition, in 1974, of a provision specifying that Fannie Mae "shall be deemed, for purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." 12 U.S.C. 1717(a)(2)(B). That provision is most naturally read to refer to both personal and subject-matter jurisdiction. See 28 U.S.C. 1332(c)(1) (diversity and removal jurisdiction based on corporate citizenship); accord 28 U.S.C. 1332(c) (1970). As Judge Stein noted, however, "Fannie Mae would have no use for diversity jurisdiction if it could enter the federal courts pursuant to its sue-and-be-sued clause." Pet. App. 39a. When it added that language, moreover, Congress did not make a similar change to Ginnie Mae's charter. It is reasonable to infer that Congress did not view such a change as necessary because Ginnie Mae, unlike Fannie Mae, already "had plenary access to the federal courts as an agency of the federal government." *Ibid.*

The court of appeals suggested (Pet. App. 19a-20a) that Congress was addressing only personal jurisdiction, seeking to ensure that Fannie Mae would still be subject to general jurisdiction in the District of Columbia even if it moved its headquarters to the D.C. suburbs. The court stated (*id.* at 20a-21a) that, if Congress had intended to affect Fannie Mae's status for

purposes of diversity jurisdiction, it would have used the word "citizen" in 12 U.S.C. 1717(a)(2)(B) instead of defining Fannie Mae as "a District of Columbia corporation." But the diversity statute provides that "a corporation shall be deemed to be a citizen of every State * * * by which it has been incorporated." 28 U.S.C. 1332(c)(1). Describing Fannie Mae as a District of Columbia corporation therefore affects both personal and subject-matter jurisdiction. That Congress enacted Section 1717(a)(2)(B) to allow Fannie Mae to move to the D.C. suburbs without a change in jurisdiction (see Pet. App. 20a; Supp. Br. in Opp. 10-11) does not advance respondents' argument. That congressional purpose is consistent with the government's interpretation of Section 1717(a)(2)(B) as providing that Fannie Mae is a citizen of Washington, D.C., for purposes of both personal and subject-matter jurisdiction.

B. There Is No Persuasive Reason To Reject The Most Natural Reading Of Fannie Mae's Charter

1. a. In construing Fannie Mae's sue-and-be-sued clause as a font of subject-matter jurisdiction, the court of appeals relied primarily on what it described as a "clear rule" articulated in *Red Cross*: that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." Pet. App. 5a (quoting *Red Cross*, 505 U.S. at 255). The court also noted that, until 1954, Fannie Mae's charter had contained language functionally identical to the language held to be jurisdiction-creating in *Red Cross*. *Id.* at 8a (explaining that the pre-1954 statute authorized Fannie Mae to "sue and be sued, complain and defend, in any court of law or equity, State or Feder-

al") (emphasis and citation omitted). The court concluded that, when Congress amended that language to its present form, "[t]here is no indication that Congress intended to eliminate federal question jurisdiction in 1954 by replacing the phrase 'court of law or equity' with the phrase 'court of competent jurisdiction.'" *Id.* at 9a.

The court of appeals' analysis is unpersuasive. In holding that a sue-and-be-sued clause "*may* be read to confer federal court jurisdiction if * * * it specifically mentions the federal courts," 505 U.S. at 255 (emphasis added), the Court in *Red Cross* did not suggest that an express reference to federal courts in such a clause will *always* carry that meaning. See *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust* v. *Raines*, 534 F.3d 779, 796 (D.C. Cir. 2008) (Brown, J., concurring in the judgment) (discussing this language in *Red Cross*). A hypothetical clause providing that "Fannie Mae may sue and be sued in federal court *only if* another statute independently confers subject-matter jurisdiction," for example, could not plausibly be read as an independent jurisdictional grant, even though it specifically mentions federal courts. See *id.* at 795. Rather, the pertinent language in *Red Cross* simply makes clear that "mentioning federal courts is necessary, but not always sufficient, to confer jurisdiction." *Ibid.*

The holding of *Red Cross* thus is best understood as a "default rule" under which a sue-and-be-sued clause may be read to confer jurisdiction under certain circumstances, not a "magic-words test" that applies whenever "the word 'federal'" appears. Pet. App. 25a (Stein, J., dissenting). Rather than treating the mere mention of federal courts as dispositive, the

Court in *Red Cross* relied heavily on the fact that the sue-and-be-sued clause at issue there was "in all relevant respects identical to one on which [the Court had] based a holding of federal jurisdiction" in *D'Oench, Duhme*. *Red Cross*, 505 U.S. at 257. Fannie Mae's sue-and-be-sued clause is not "in all relevant respects identical" to the clauses at issue in *Red Cross* and *D'Oench, Duhme*, because it authorizes suit only in courts "of competent jurisdiction."

The Court in *Red Cross* also noted that Congress had amended the Red Cross's charter to its present form in 1947, five years after the ruling in *D'Oench, Duhme*. 505 U.S. at 260. The Court viewed that sequence of events as "indicat[ing] that Congress may well have relied on that holding to infer that amendment of the Red Cross Charter's 'sue and be sued' provision to make it identical to the [one construed in *D'Oench, Duhme*] would suffice to confer federal jurisdiction." *Ibid.* No similar inference can be drawn in this case. To the contrary, in 1954, Congress amended Fannie Mae's sue-and-be-sued clause by *eliminating* language identical to that construed in *D'Oench, Duhme* ("any court of law or equity, State or Federal"), 315 U.S. at 455 (citation omitted), and replacing it with substantively different language ("any court of competent jurisdiction, State or Federal"), Housing Act of 1954, § 201 [§ 309(a)], 68 Stat. 620.

b. As the court of appeals observed, the legislative history is largely "silen[t]" about Congress's reasons for the 1954 amendment to Fannie Mae's sue-and-be-sued clause. Pet. App. 10a. From that silence, the court inferred that, "[g]iven the important practical effect of eliminating federal question jurisdiction under Fannie Mae's sue-and-be-sued clause, we should expect the

House or Senate to have said something if they intended a change of that sort." *Ibid.* The court failed, however, to grapple with the fact that the 1954 change to the sue-and-be-sued clause was part of a larger statute that fundamentally transformed Fannie Mae's relationship to the federal government by converting it to a mixed-ownership corporation and providing "for the eventual substitution of private capital for Government investment in its secondary market operations." H.R. Rep. No. 1429, 83d Cong., 2d Sess. 18 (1954); see Pet. App. 34a (Stein, J., dissenting).

During the period from 1938 until 1954, when Fannie Mae was wholly owned by the federal government (see p. 3, *supra*), 28 U.S.C. 1349 (and its statutory predecessor) conferred federal jurisdiction over suits by and against the corporation. Assuming that the pre-1954 version of the sue-and-be-sued clause was a grant of federal jurisdiction over suits brought by or against Fannie Mae, the practical effect of that clause was simply to duplicate the conferral of jurisdiction that Section 1349 then provided. After Congress adopted the present sue-and-be-sued language as part of the 1954 amendments, the government's ownership of Fannie Mae continued for a time to exceed one-half, and Section 1349 therefore continued to provide an independent source of federal jurisdiction for suits by and against the corporation. See Pet. App. 36a (Stein, J., dissenting). Congress expected and intended, however, that majority ownership of Fannie Mae would eventually pass to private hands. See *ibid.*

Under the general rule established by Section 1349, that change in ownership would mean that suits involving Fannie Mae could thenceforth be brought in federal court only if some independent ground of fed-

eral jurisdiction existed. The absence of legislative history specifically noting that jurisdictional consequence of Fannie Mae's anticipated privatization provides no basis for declining to give the phrase "of competent jurisdiction" its natural meaning. Construing the contemporaneous change to the sue-and-be-sued clause so that Fannie Mae would continue to be governed by the jurisdictional rule that applies to federally chartered corporations generally, see 28 U.S.C. 1349, is wholly consistent with the overall thrust of the 1954 amendments. See Pet. App. 37a (Stein, J., dissenting) (explaining that the 1954 Congress intended "to place the government and Fannie Mae on paths that would ultimately diverge," and that "[t]he amendment to Fannie Mae's sue-and-be-sued clause was part and parcel of this overarching intendment").

c. Until 1954, Fannie Mae was authorized "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." See p. 3, *supra*. In the view of the court of appeals, "the most likely explanation" for the 1954 amendment to Fannie Mae's charter was simply to modernize it by eliminating the outdated references to courts of law and equity. Pet. App. 10a. If that had been Congress's sole objective, however, it could simply have deleted the words "of law or equity" and left the sue-and-be-sued clause otherwise unchanged. The desire to modernize the provision by removing anachronistic language does not explain Congress's simultaneous addition of the phrase "of competent jurisdiction"—a phrase that "seem[s] to look to outside sources of jurisdictional authority." *Sanders*, 430 U.S. at 106 n.6.

d. The same 1954 statute that amended Fannie Mae's charter, see Housing Act of 1954, § 201 [§ 309(a)],

68 Stat. 620, also amended the sue-and-be-sued clause of the Federal Savings and Loan Insurance Corporation (FSLIC) and added a sue-and-be-sued clause for the Home Loan Bank Board (Board). Before 1954, the FSLIC's sue-and-be-sued clause was identical to Fannie Mae's, authorizing the FSLIC "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." National Housing Act, Tit. IV, § 402(c)(4), 48 Stat. 1256. In the Housing Act of 1954, Congress amended the clause to authorize the FSLIC "[t]o sue and be sued, complain and defend, in any court of competent jurisdiction in the United States or its Territories or possessions or the Commonwealth of Puerto Rico." Tit. V, § 501(1), 68 Stat. 633. That amendment added the phrase "of competent jurisdiction" while deleting the prior explicit reference to "Federal" courts. The 1954 statute likewise authorized the Board "to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico." § 503(2), 68 Stat. 635. The court of appeals inferred that, if Congress had intended to "eliminate federal question jurisdiction from [Fannie Mae's] sue-and-be-sued clause," it would have used the same language as it did for the FSLIC. Pet. App. 12a; see Supp. Br. in Opp. 8.

That inference is unsound. The 1954 Congress broadened the range of courts in which the FSLIC could sue and be sued to include courts in Puerto Rico and U.S. territories and possessions. Housing Act of 1954, § 501(1), 68 Stat. 633. Since some of those courts are neither "State" nor "Federal," deletion of the phrase "State or Federal" was a natural complement to that change. Congress's simultaneous enact-

ment of a virtually identical sue-and-be-sued clause for the Board, which likewise referred to courts in United States "territories or possessions or the Commonwealth of Puerto Rico," *id.* § 503(2), 68 Stat. 635, but did not specifically mention "Federal" courts, supports that understanding. In any event, the fact that Congress could have used alternative language to make clear that Fannie Mae's sue-and-be-sued clause is not an independent grant of federal jurisdiction provides no sound basis for declining to give the phrase "court of competent jurisdiction" its most natural meaning.

Indeed, the 1954 amendment to the FSLIC's sue-and-be-sued clause substantially undermines another aspect of the court of appeals' reasoning. As one ground for rejecting petitioners' argument, the court surmised that, if the 1954 Congress had intended to divest Fannie Mae's sue-and-be-sued clause of its prior character as an independent grant of federal jurisdiction, the relevant committee reports would have referred specifically to that intent. See Pet. App. 9a-10a. Yet the court recognized that the 1954 statute had precisely that effect with respect to the FSLIC's sue-and-be-sued clause, despite the apparent absence of any legislative history referring to that change.

2. In their supplemental brief in opposition filed at the petition stage, respondents set forth additional arguments in support of their contention that Fannie Mae's charter vests federal district courts with original jurisdiction over suits by and against Fannie Mae. Those arguments do not justify departing from the most natural reading of Fannie Mae's charter.

a. Respondents contend (Supp. Br. in Opp. 6) that petitioners' reading of Fannie Mae's charter conflicts

with this Court's decision in *Breuer* v. *Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003). The question in *Breuer* concerned the proper interpretation of 29 U.S.C. 216(b), which provides that a suit under the FLSA "may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction." See 538 U.S. at 693. Pursuant to 28 U.S.C. 1441, an employer had removed an FLSA suit brought against it by a former employee. See *Breuer*, 538 U.S. at 693-694. The employee argued that 29 U.S.C. 216(b), by providing that an FLSA action "may be maintained" in any state court of competent jurisdiction, established "an express exception to the general authority of removal under § 1441(a)." *Id.* at 694.

The Court rejected that argument. It observed that "Breuer could have begun his action in the [d]istrict [c]ourt" because "[t]he FLSA provides that an action 'may be maintained . . . in any Federal or State court of competent jurisdiction,'" 29 U.S.C. 216(b), "and the district courts would in any event have original jurisdiction over FLSA claims under 28 U.S.C. § 1331, as 'arising under the Constitution, laws or treaties of the United States,' and § 1337(a), as 'arising under any Act of Congress regulating commerce.'" *Breuer*, 538 U.S. at 694. The Court explained that "[r]emoval of FLSA actions is * * * prohibited under § 1441(a) only if Congress expressly provide[s] as much," and it concluded that Section 216(b) does not expressly prohibit removal. *Ibid.*

The Court's decision in *Breuer* has no bearing on the proper interpretation of Fannie Mae's sue-and-be-sued clause, and the Court in *Breuer* did not discuss its distinct precedents addressing various formula-

tions used in sue-and-be-sued clauses of federally created entities. Moreover, because Breuer's suit arose under the FSLA, the action could have been initiated in federal court under 28 U.S.C. 1331 and/or 1337. *Breuer*, 538 U.S. at 694. The Court therefore had no occasion to decide whether the FLSA provision stating that suit could be maintained against an employer "in any Federal or State court of competent jurisdiction," 29 U.S.C. 216(b), itself provided the district courts with subject-matter jurisdiction.[3]

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[3] The brief for the United States in *Breuer* stated that 29 U.S.C. 216(b) "confers jurisdiction on federal courts over FLSA claims," U.S. Amicus Br. at 5, *Breuer*, *supra* (No. 02-337) (citing *Williams* v. *Jacksonville Terminal Co.*, 315 U.S. 386, 390 & n.3 (1942)), and further stated that, "[m]oreover, because the FLSA is an Act of Congress regulating commerce, federal courts ha[d] jurisdiction" under Sections 1331 and 1337, *ibid*; see also U.S. Amicus Br. at 2-3, *Breuer*, *supra* (No. 02-337). In *Williams*, this Court stated that jurisdiction of FLSA actions "was conferred by" 28 U.S.C. 41(8) (1940), the predecessor to 28 U.S.C. 1337, "and by § 16(b) of the [FLSA], 29 U.S.C. § 216(b)." 315 U.S. at 390. Section 216(b) at the time provided that an action could be maintained against an employer "in any court of competent jurisdiction," without any specific mention of federal courts.

It is unclear whether the Court in *Williams* meant that Section 216(b) constituted a grant of jurisdiction independent of what is now 28 U.S.C. 1337, or rather that Section 216(b) effectively invoked the existing grant of jurisdiction in what is now 28 U.S.C. 1337. See *Abbey* v. *United States*, 745 F.3d 1363, 1371 (Fed. Cir. 2014) (jurisdictional language in 29 U.S.C. 216(b) "require[s] one to look elsewhere to find out what court, if any, has jurisdiction") (brackets in original) (quoting *Zumerling* v. *Devine*, 769 F.2d 745, 749 (Fed. Cir. 1985)). Nor did the United States' brief in *Breuer* analyze that question beyond the statement quoted above. Furthermore, in contrast to Fannie Mae's charter, Section 216(b) is a provision that creates a cause of action against employers, not a provision that defines the general powers of a federally chartered

b. Respondents contend (Supp. Br. in Opp. 7-8) that two pre-1954 court of appeals decisions—*Ferguson* v. *Union National Bank of Clarksbury*, 126 F.2d 753 (4th Cir. 1942), and *George H. Evans & Co.* v. *United States*, 169 F.2d 500 (3d Cir. 1948)—would have alerted the 1954 Congress that language authorizing Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," 12 U.S.C. 1723a(a), vested federal district courts with subject-matter jurisdiction over all suits involving Fannie Mae. Respondents' reliance on those decisions is misplaced.

In the 1940s, as today, the Tucker Act, 28 U.S.C. 1491, authorized a specialized court (then called the Court of Claims) to adjudicate various monetary claims against the United States, while giving the federal district courts concurrent jurisdiction over all such claims that did not exceed $10,000. Compare 28 U.S.C. 41(20) (1940), with 28 U.S.C. 1346(a)(2). The court in *Ferguson* held that a breach-of-contract suit against the Federal Housing Administrator could be brought in federal district court even though the plaintiff sought more than $10,000. 126 F.2d at 756-757. Relying on 12 U.S.C. 1702 (1940), which authorized the Administrator to "sue and be sued in any court of competent jurisdiction, State or Federal," the court held that "the jurisdiction of a United States [d]istrict [c]ourt to entertain a suit against governmental agencies and corporations is not limited by the Tucker Act." *Ferguson*, 126 F.2d at 756-757 (citation omitted). The court of appeals in *George H. Evans & Co.* likewise held that the plaintiff could bring suit against federal housing agencies in federal district

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entity, including its capacity to sue or be sued. Cf. *Red Cross*, 505 U.S. at 268-270 (Scalia, J., dissenting).

court even though the amount in controversy exceeded $10,000. 169 F.2d at 502.

The core holding of those decisions—*i.e.*, that the Tucker Act's $10,000 limit does not apply to suits brought against federal agencies pursuant to a sue-and-be-sued clause—is entirely consistent with the position taken by petitioners and the government in this case. There is no dispute that a suit against Fannie Mae for more than $10,000 can be brought in (or removed to) federal district court if an independent ground of subject-matter jurisdiction exists, *e.g.*, if the plaintiff asserts a federal-law cause of action. Respondents read the decisions in *Ferguson* and *George H. Evans & Co.* to endorse the further proposition that the relevant sue-and-be-sued clause itself vested the district court with subject-matter jurisdiction. But it is unclear whether the courts of appeals allowed the suits to proceed on that basis, or whether they believed (for example) that the plaintiffs' breach-of-contract claims arose under federal law. Cf. *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979) ("This Court has consistently held that federal law governs questions involving the rights of the United States arising under nationwide federal programs."). In any event, respondents identify no reason to believe that the 1954 Congress was aware of those two decisions or intended to incorporate those courts' approach when it amended the sue-and-be-sued clause that governs a *different* federal entity.

c. Citing *Blackmar* v. *Guerre*, 342 U.S. 512 (1952), respondents contend (Supp. Br. in Opp. 9) that the 1954 Congress "would have understood the phrase 'court of competent jurisdiction' as confirming the requirement of *personal* jurisdiction." That argument is not

persuasive. In *Blackmar*, the petitioner had filed suit against the Civil Service Commission in federal district court in Louisiana. The Court explained that the Civil Service Commission "is not a corporate entity which Congress has authorized to be sued." *Blackmar*, 342 U.S. at 515. The Court held that, even assuming the Commission's actions were reviewable under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, the only "court of competent jurisdiction" to hear the claim would be one that had personal jurisdiction over the Commissioners, which the federal district court in Louisiana did not. *Blackmar*, 342 U.S. at 515-516.

Respondents contend (Supp. Br. in Opp. 9) that, because *Blackmar* was decided shortly before the 1954 amendment to Fannie Mae's charter, Congress "surely would have understood" that the phrase it was adding to Fannie Mae's charter referred to personal jurisdiction. *Blackmar* reinforces what would in any event be the natural inference that, in an action invoking Fannie Mae's sue-and-be-sued clause, the plaintiff must identify another provision of law that vests the district court with personal jurisdiction over the defendant. But *Blackmar* does not support respondents' contention that the phrase "of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause refers *only* to personal jurisdiction. Indeed, the APA provision cited in *Blackmar* (5 U.S.C. 1009 (1952)) was the statutory predecessor to current 5 U.S.C. 703, which the Court in *Sanders* described, with specific reference to "subject-matter jurisdiction," as "seem[ing] to look to outside sources of jurisdictional authority." *Sanders*, 430 U.S. at 106 n.6.

d. Respondents contend (Supp. Br. in Opp. 11-12) that Congress could not have intended to give Fannie Mae less access to federal courts than Freddie Mac, which may "sue and be sued, complain and defend, in any State, Federal, or other court." 12 U.S.C. 1452(c)(7). But quite apart from the differences between the two entities' sue-and-be-sued clauses, Congress has enacted additional provisions whose practical effect is to confer federal jurisdiction over all suits involving Freddie Mac. Specifically, 12 U.S.C. 1452(f) provides that Freddie Mac "shall be deemed to be an agency included in sections 1345 and 1442 of * * * title 28"; that all civil actions involving Freddic Mac are "deemed to arise under the laws of the United States"; and that Freddie Mac may remove suits to federal court. Congress has not enacted comparable statutory provisions with respect to Fannie Mae.

* * * * *

The most natural reading of Congress's authorization for Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," is that the court in which the suit is filed must have some independent authorization to exercise subject-matter jurisdiction over the suit. Neither respondents nor the court of appeals has offered any persuasive reason to reject that natural reading of the statutory text.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

EDWIN S. KNEEDLER*
Deputy Solicitor General
BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ANN O'CONNELL
Assistant to the Solicitor General
MARK B. STERN
ABBY C. WRIGHT
Attorneys

AUGUST 2016

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* The Acting Solicitor General is recused in this case.

RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, *et al.*,

Petitioners,

v.

CENDANT MORTGAGE CORPORATION, D/B/A/ PHH MORTGAGE, *et al.*,

Respondents.

On Writ of Certiorari to the United States Courts of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONERS

Julie Braman Kane
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street, N.W.
Suite 200
Washington, DC 20001
(202) 965-3500

Jeffrey R. White
Counsel of Record
AMERICAN ASSOCIATION FOR JUSTICE
777 6th Street, N.W.
Suite 200
Washington, DC 20001
(202) 944-2839
jeffrey.white@justice.org

Attorney for Amicus Curiae

Library of Congress
Law Library

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IDENTITY AND INTEREST OF AMICUS CURIAE

The American Association for Justice ("AAJ") respectfully submits this brief as amicus curiae in support of the Petition for Certiorari in this case.[1] AAJ is a voluntary national bar association whose members primarily represent plaintiffs in personal injury and property rights cases, as well as plaintiffs in civil rights, employment rights, and consumer rights actions.

Some clients of AAJ members have state law causes of action against federally chartered corporations and seek to pursue those claims in state courts. AAJ is concerned that lower court's decision in this case will allow federally chartered defendants to override the plaintiff's choice of the state court forum based on the federal charter with little or no evidence that Congress actually intended that result. Removal of such actions by federally chartered corporations and the attendant litigation regarding subject matter jurisdiction makes representation of clients more difficult and adds unnecessary complexity and expense to the vindication of state law rights.

SUMMARY OF ARGUMENT

1. The lower court's bright-line rule inferring subject matter jurisdiction in a case

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[1] All parties have consented to the filing of this *amicus curiae* brief, and copies of the emails granting consent have been filed with the Clerk. The undersigned counsel for *amicus curiae* affirms, pursuant to Supreme Court Rule 37.6, that no counsel for a party authored this brief in whole or in part and no person or entity other than AAJ, its members, and its counsel contributed monetarily to the preparation or submission of this brief.

involving a congressionally chartered corporation, based entirely on a reference to federal courts in the charter, is inconsistent with the role of federal courts. Federal courts are courts of limited jurisdiction. The requirement that a federal court be certain of its own subject matter jurisdiction is of fundamental importance. Plaintiffs in this case assert claims against Fannie Mae that are based entirely on state statutory and common-law causes of action. The court of appeals below held that the district court had subject matter jurisdiction in this case based on a provision in Fannie Mae's congressional charter that authorizes Fannie Mae "to sue and be sued . . . in any court of competent jurisdiction, State or Federal."

That provision expressly addresses no more than Fannie Mae's authority capacity to sue and is, at best, ambiguous as to whether Congress meant also to expand the original jurisdiction of district courts to actions that otherwise belong in state courts. The Ninth Circuit below, however, discerned in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), a bright line rule that the bare mention of federal courts in the sue-and-be-sued provision suffices to create federal subject matter jurisdiction. However, *Red Cross* stated that such a reference *may* be read to confer federal court jurisdiction, not that it was alone sufficient. The mere mention of federal courts—without clarifying indicators such statutory text, legislative history, or a meaningful federal interest—is too opaque to show congressional intent to expand jurisdiction.

Nor is it plausible that Congress would use such an ambiguous and indirect means to expand federal court jurisdiction. The many federally chartered corporations engage in widely diverse

activities that may or may not implicate federal interests. Some are owned in whole or in part by the United States. Government Sponsored Enterprises, including Fannie Mae and Freddie Mac, are privately owned but perform quasi-governmental functions. Finally, Congress has chartered over 100 charitable and nonprofit organizations, most of which do not engage in governmental or quasi-governmental activities at all. A court must not grasp at a reference to federal courts in the federal charter to infer that Congress intended to guarantee easy access to federal court in any case involving such a corporation.

The court below relied on *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824). But that case involved a direct attack on the national bank by a hostile state government where state courts could not be relied on to protect federal interests. In the case before this Court, a private corporation faces state law claims by private individuals, a dispute in which state courts can be counted on to administer justice fairly. Indeed, when this Court extended *Osborn* to purely private state-law disputes, Congress intervened by limiting automatic jurisdiction over congressionally chartered corporations to cases where the United States owns more than half the corporation's capital stock. Congress has clearly erased any presumption favoring federal jurisdiction in cases involving federal corporations. It is instead the responsibility of the federal judicial branch to avoid intrusion into state authority except where clearly authorized by Congress.

Additionally, Congress has by now demonstrated that it is fully capable of expressly conferring jurisdiction when it deems the federal interest so requires. In fact, Congress has done so in

the charter for Freddie Mac. That Congress did not similarly extend federal court jurisdiction in favor of Fannie Mae strongly indicates congressional intention to preclude federal court involvement in such actions where federal law does not provide the rule of decision.

As a practical matter as well, courts should avoid inviting an influx of state law cases into federal court unless Congress clearly so intended. Federal courts possess no particular expertise in matters of state law and their resources are required to attend to matters that only federal courts can handle or that they handle better that state courts.

2. Implying federal subject matter jurisdiction over cases that would otherwise be decided by state courts undermines the vital role of state courts in our federalist system. The Founders designed our system of dual sovereigns to afford the greatest protections to the rights and freedoms of the American people. State government can be more responsive to local needs, more accessible to citizen participation, and can serve as "laboratories" in social policy.

State courts play an essential role. They are the primary administrators of criminal and civil justice, the immediate and visible guardians of life and property, and defenders of civil liberties. Indeed, state courts have made significant advances in the securing of state constitutional protections that are different from or broader than those guaranteed by the United States Constitution. State courts are also more reflective of and responsive to the concerns of ordinary citizens due to their broader reliance on trial by jury.

The decision below, however, has the effect of ousting state courts from their responsibility to administer justice in a significant class of cases based entirely on state law, with no showing that meaningful federal interests warrant such an intrusion. Even assuming that the federal court correctly applies state law, the outcome is one decided by judges not selected under the state's system, who are not accountable to the state court's constituency, and who do not speak with the authority of the sovereign state on a matter of state law.

To the extent that state courts are deprived of opportunities to develop state-law protections of personal rights and property rights, the advantages of federalism are thwarted.

3. This Court has already crafted a tool that protects the role and responsibility of state courts in the federal system. The clear statement rule requires simply that if Congress intends to alter the usual constitutional balance between the states and the federal government, it must make its intent clear.

Obviously, the actions of Congress may impact the integral functions of state government, including state courts. This Court has retreated from judicially enforced textual protection of state sovereignty under the Tenth Amendment. Rather, the Court has relied on the structural safeguards inherent in the constitutional design: The states can protect their interests through their representation in Congress.

The necessary corollary is that when Congress takes an action that intrudes upon state functions, Congress must speak plainly and unambiguously. In this way, the states are provided fair notice that

legislation affecting their interests is before the Congress, affording them the opportunity to oppose or alter unwanted intrusion into state sovereignty. It also ensures that congressional representatives consider the proposed legislation's impact on the states. And it allows the judicial branch, in interpreting legislation, to avoid unintended encroachments on the authority of the States.

The decision below found an implied expansion of federal subject matter jurisdiction based on an ambiguous statutory reference to federal courts in Fannie Mae's congressional charter. The court's rule evades the very structural protections that this Court has relied upon to safeguard federalism. Congress has shown it can speak clearly when creating original jurisdiction over federally chartered corporations. This Court should require such a clear statement.

ARGUMENT

I. The Lower Court's Inference of Subject Matter Jurisdiction in a Civil Action Involving a Congressionally Chartered Corporation Based Entirely on Congress' Ambiguous Reference to Federal Courts Exceeds the Limited Role of Federal Courts.

A. Bare reference in the charter to federal courts is ambiguous as to congressional intent to create subject matter jurisdiction and does not indicate federal interests warranting the availability of a federal forum.

The requirement that a federal court be certain as to its own subject matter jurisdiction is a matter of fundamental importance. "Jurisdiction is power to declare the law," and without it, "the court cannot proceed at all in any cause." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1868)). Subject matter jurisdiction and personal jurisdiction "keep the federal courts within the bounds the Constitution and Congress have prescribed." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Therefore, the requirement that jurisdiction be established as a threshold matter "is inflexible and without exception." 523 U.S. at 95 (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). *See also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

Plaintiffs in this case assert claims against the Federal National Mortgage Association ("Fannie Mae"), that are based entirely on state statutory and common-law causes of action. *See* Compl., "Fraud and Deceit," ¶¶ 33-40; "Racial Discrimination" in violation of Cal. Civ. Code § 51 ("Unruh Act"), Compl. ¶¶ 41-47; "Fraud and Quiet Title," in violation of Cal. Civ. Code 2294, Compl. ¶¶ 48-59; "Slander of Title," Compl. ¶¶ 60-64; "Negligent Misrepresentation," Compl. ¶¶ 65-71; "Civil Conspiracy," Compl. ¶¶ 72-75; and "Intentional Infliction of Emotional Distress," Compl. ¶¶ 76-82. The court of appeals below nevertheless held that the district court had subject matter jurisdiction in this case based on a provision in Fannie Mae's charter that authorizes Fannie Mae "to sue and be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." *Lightfoot v. Cendant Mortgage Corp.*, 769 F.3d 681, 683 (9th Cir. 2014) (quoting 12 U.S.C. § 1723a(a)).

That charter provision expressly addresses no more than Fannie Mae's capacity to sue and "no right is conferred on the [corporation] by the act of incorporation, to sue in the federal courts." *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 86 (1809). The Ninth Circuit, however, discerned in this Court's decision in *American National Red Cross v. S.G.*, 505 U.S. 247 (1992), a bright line rule:

> In *Red Cross*, the Supreme Court gave us a clear rule for construing sue-and-be-sued clauses for federally chartered corporations. The Court held that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts."

769 F.3d at 683 (quoting *Red Cross*, 505 U.S. at 255).

In *Red Cross*, this Court concluded from its comparison of the charters in *Deveaux*, 9 U.S. at 85; *Bankers' Trust Co. v. Texas & Pacific Railway*, 241 U.S. 295, 304-05 (1916); and *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447, 455 (1942), that "a congressional charter's 'sue and be sued' provision *may* be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." 505 U.S. at 255 (emphasis added). This Court did not state that a bare reference to federal courts was itself sufficient to confer new subject matter jurisdiction on federal courts. Indeed, Justice Souter, writing for the *Red Cross* majority, proceeded to inquire from the legislative history of the Red Cross charter whether Congress had in fact intended to create federal jurisdiction. The Court ultimately rejected respondents' more limited view. *Id.* at 260-63. Justice Souter's exercise would have been wholly superfluous and unnecessary if the Court had in fact established a bright line rule.

The court below, by contrast, undertook no inquiry into the intent of Congress regarding Fannie Mae's charter. Indeed, the court's only reference to legislative intent was to state that there was "no indication that Congress intended to eliminate federal question jurisdiction in 1954. . . . Instead, there was silence." 769 F.3d at 685.

The lower court determined that *Red Cross* established a "rule" that "suffices to confer federal jurisdiction" simply by use of the term "federal" court. *Lightfoot*, 769 F.3d at 684. *See also id.* at 690 (Stein, J., dissenting) (stating that the majority applied a rule of "automatic federal subject matter jurisdiction").

The Solicitor General has ably demonstrated that the text and legislative history of Fannie Mae's charter do not support such a bright-line rule and do not support subject matter jurisdiction in this case. Br. for the United States as Amicus Curiae on Pet. for Certiorari 11-17.

Such a bright-line rule is opaque as to congressional intent to expand the subject matter jurisdiction of federal courts, and it is also opaque as to any federal interests that might be at stake which might have persuaded Congress to make a federal forum available.

B. Congressionally chartered corporations vary greatly in the federal interests involved in their activities.

This Court in *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374 (1995), reviewed in detail "the long history of corporations created and participated in by the United States for the achievement of governmental objectives." *Id.* at 386 & 387-91. Well over 100 federally chartered corporations are tasked with widely diverse activities. *See generally* Kevin R. Kosar, Congressional Research Service, *Congressional or Federal Charters: Overview and Enduring Issues* (Apr. 19, 2013), *available at* https://www.fas.org/sgp/crs/misc/RS22230.pdf; A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. Ill. L. Rev. 543, 555-57 (1995).

Some are owned in whole or in part by the federal government. *See* 31 U.S.C. § 9101 (listing 28 such "government corporations"). In addition, seven Government Sponsored Enterprises ("GSEs"),

including Fannie Mae and Freddie Mac, are privately owned but perform "quasi-governmental functions." Paul E. Lund, *Federally Chartered Corporations and Federal Jurisdiction*, 36 Fla. St. U. L. Rev. 317, 324 (2009); *see* 12 U.S.C. §§ 4501-4642 (detailing the powers of GSE's). Finally, Congress has chartered over 100 charitable and nonprofit organizations, including the American Red Cross and the Little League, that do not engage in governmental or quasi-governmental activities at all. *See* 36 U.S.C. §§ 10101-240112; Kevin R. Kosar, Congressional Research Service, *Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations"): What They Are and How Congress Treats Them* (July 14, 2008). The number and types of federally chartered corporations will likely expand. Proposals to federally charter insurance companies, securities firms, and financial services companies have been discussed in Congress. Lund, *supra*, at 325.

It is simply implausible that Congress would use a charter provision that expressly authorizes a corporation to sue or be sued to implicitly expand the jurisdiction of the federal courts. It is doubly implausible that Congress would telegraph such a fundamentally important change by the oddly indirect reference to federal courts in a provision that addresses the authority of the corporation, not the authority of the federal courts.

Federal district courts are "'courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" *Gunn v. Minton*, 133 S. Ct. 1059, 1064 (2013) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)). An action is presumed to lie outside this limited jurisdiction. *Kokkonen*, 511 U.S. at 377 (citing *Turner*

v. Bank of N. Am., 4 U.S. (4 Dall.) 8, 11 (1799)), and the "burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.*

Amicus submits that courts may not infer federal jurisdiction over a congressionally chartered corporation based on a bare reference to federal courts "unless [the] case implicates a meaningful federal interest." Lorretta Shaw, *A Comprehensive Theory of Protective Jurisdiction: The Missing "Ingredient" of "Arising Under" Jurisdiction*, 61 Fordham L. Rev. 1235, 1237 (1993). The fact that Congress referred to federal courts in the sue-or-be-sued provision in Fannie Mae's charter by Congress does not establish such a federal interest that a federal forum must be available for any state-law dispute to which Fannie Mae is a party. Indeed, there are many such cases that do not implicate federal interests at all. *See, e.g.*, *Colarte v. Fed. Nat'l Mortg. Ass'n*, 689 A.2d 869 (N.J. Super. Ct. Law Div. 1996), *overruled on other grounds*, *Briglia v. Mondrian Mortg. Corp.*, 698 A.2d 28 (N.J. Super. Ct. App. Div. 1997) (negligence action under state law by injured pedestrian who fell on a snow-covered sidewalk adjacent to property owned by Fannie Mae). It should be the corporation's burden on removal to show either that Congress expressly granted original jurisdiction in district court over actions to which the corporation is a party, or that a "meaningful federal interest" is at stake in the case, supporting a finding that Congress intended to make the federal forum available.

C. Congress has reacted to this Court's prior expansive view of federal jurisdiction in cases involving federally chartered corporations by limiting jurisdiction to cases where federal interests are truly at stake.

The court below viewed *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824), as the seminal decision that "made clear that a sue-and-be-sued clause for a federally chartered corporation confers federal question jurisdiction if it specifically mentions federal courts." *Lightfoot*, 769 F.3d at 683.

In *Osborn*, Chief Justice John Marshall broadly declared that, because the Bank of the United States could only sue as authorized by its congressionally-enacted charter, any such suit "literally, as well as substantially" arises under the laws of the United States for purposes of Article III. *Osborn*, 22 U.S. at 823. This Court has noted that *Osborn* "reflects a broad conception of 'arising under' jurisdiction" that has since been questioned. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 492-93 (1983). Amicus suggests that the context of the controversy facing Chief Justice Marshall in *Osborn* indicates that *Osborn* should not dictate the proper scope of federal jurisdiction in this case.

In *Osborn*, the state of Ohio, defying this Court's decision in *M'Culloch v. Maryland*, 17 U.S. (1 Wheat.) 316 (1819), levied a ruinous annual tax on the second National Bank. State officials seized some $100,000 from the Bank's office in Chillicothe, Ohio. *Osborn*, 22 U.S. at 832-36. The Bank sued the state officials in federal court, seeking to recover the seized funds and enjoin the collection of the tax, alleging that

the seizure violated the federal Constitution. *Id.* at 859-60.

At that time there was no general authorization for federal courts to hear cases arising under federal law. Congress first authorized general federal question jurisdiction in the Judiciary Act of 1875, now codified as amended at 28 U.S.C. § 1331. Yet, the Bank of the United States "was sadly in need of a federal haven for its litigation." Harry Shulman & Edward C. Jaegerman, *Some Jurisdictional Limitations on Federal Procedure*, 45 Yale L.J. 393, 405 (1936). "The Government was interested as an owner in the Bank and the Bank was performing governmental service [but] the Bank was the object of great popular hatred and of measures of reprisal by many state legislatures." *Id. See also* Michael T. Maloan, *Federal Jurisdiction and Practice: The American National Red Cross and the Interpretation of "Sue and Be Sued" Clauses*, 45 Okla. L. Rev. 739, 759 (1992) (The Bank "was the subject of much hatred from local populations and state legislatures . . . [and] needed the security of a federal forum."). As Daniel Webster argued to the Court, the "constitution itself supposes that [state judicial systems] may not always be worthy of confidence, where the rights and interests of the national government are drawn in question." 22 U.S. (9 Wheat.) at 811.

Fannie Mae does not face those historical exigencies. The corporation is not facing hostile state governments eager to use state courts to block the federal government's actions and drain its funds. Fannie Mae faces private citizens asserting causes of action under state law. There is no good reason why a case stemming from a fall on a snowy sidewalk, *see Colarte*, *supra*, or a foreclosure of real property in

violation of state law, should require a federal forum. What Chief Justice Marshall deemed essential to preserve the federal government's interest from covetous state governments should not be wrenched out of context to accomplish an unnecessary expansion of federal subject matter jurisdiction in a state-law cause of action between private parties.

In fact, Congress itself acted to correct what it perceived as judicial overreaching regarding federal jurisdiction. In *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), this Court, relying on *Osborn*'s broad view of "arising under" jurisdiction, held that any claim against a federally chartered corporation necessarily arose under federal law and could therefore be removed to federal court. *Id.* at 14.

The ensuing years witnessed a flood of cases involving federally chartered corporations asserting ordinary state-law claims in the federal courts or removing such claims from state courts. Alarmed, Congress took steps to relieve the federal courts' workload by restricting subject matter jurisdiction over such cases. In 1882, Congress eliminated automatic federal question jurisdiction in cases involving national banks. Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163. In 1915, Congress eliminated automatic federal question jurisdiction over suits involving federally chartered railroads. Act of Jan. 28, 1915, ch. 22, § 5, 38 Stat. 803, 805. Finally, Congress enacted the Judges' Bill of 1925, 43 Stat. 936, 941, now codified at 28 U.S.C. § 1349, which eliminated automatic federal question jurisdiction for all other federally chartered corporations, except those in which the federal government owns a controlling

interest.[2] *See Gov't Nat'l Mortgage Ass'n v. Terry*, 608 F.2d 614, 620-21 n.10 (5th Cir. 1979) ("[S]ection 1349 was passed to diminish the flood of federal litigation that resulted from the *Pacific Railroad Removal* Cases."); *Murphy v. Colonial Fed. Savings & Loan Ass'n*, 388 F.2d 609, 611-12 (2nd Cir. 1967) (purpose of § 1319 was to stem "the flood of litigation to which the federal courts were . . . subjected" as a result of the decision in *Pacific Railroad Removal Cases*); *Crum v. Veterans for Foreign Wars*, 502 F. Supp. 1377 (D. Del. 1980) (the purpose of § 1319 was to lighten the case load of the federal courts); *Latch v. Tenn. Valley Auth.*, 312 F. Supp. 1069, 1073 (N.D. Miss. 1970) (same).

Thus, in the case of government-chartered corporations that are wholly or partially owned by the federal government, where the federal interest in litigating in a federal forum would be clear, Congress has limited original jurisdiction of federal courts to those cases where the interest of the United States is strongest. Expanding federal jurisdiction by implication could no longer be deemed consistent with congressional intent. Chief Justice Stone observed, that it is instead the responsibility of the federal judicial branch to avoid intrusion into state authority except where clearly authorized by Congress:

> The power reserved to the states under the Constitution to provide for the

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[2] 28 U.S.C. § 1349 provides:

> The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.

> determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. "Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined."

Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941) (quoting *Healy v Ratta*, 292 U.S. 263, 270 (1934)).

A second reason against implying a grant of subject matter jurisdiction in Congress' oblique reference to federal courts is one that was not available to Chief Justice Marshall: Congress has already demonstrated that it is fully capable of expressly conferring jurisdiction when it deems the federal interest so requires.

For example, 28 U.S.C. § 1345 expressly provides for original jurisdiction in the district courts for suits by federal agencies, and 28 U.S.C. § 1442(a)(1) authorizes such agencies to remove state court actions to U.S. district court. Congress has also provided that certain federally created entities shall be deemed federal agencies for purposes of original jurisdiction and removal under those statutes. One such agency is the Federal Home Loan Mortgage Corporation ("Freddie Mac"), a GSE like Fannie Mae. *See* 12 U.S.C. § 1452(f) (Actions against Freddie Mac "shall be deemed to arise under the laws of the United States, and the district courts of the United States

shall have original jurisdiction of all such actions.").[3] The fact that Congress did not extend similar federal court jurisdiction in favor of Fannie Mae strongly indicates congressional intention to preclude federal court involvement in such actions where federal law does not provide the rule of decision.

Justice Cardozo has stated, based on Congress' reaction, that *Osborn*'s broad pronouncement regarding federal jurisdiction was no longer a guiding principle. *Gully v. First Nat'l Bank*, 299 U.S. 109, 113 (1936). Indeed, this Court has come to regard the *Pacific Railroad Removal Cases* as "unfortunate." *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 379 n.50 (1959).

Instead, this Court stated that in ascertaining federal jurisdiction in such cases "the federal nature of the right to be established is decisive—not the source of the authority to establish it." *Gully*, 299 U.S. at 114 (quoting *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 483 (1933)). The proper inquiry for a federal court

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[3] The congressional authorization for the Federal Reserve similarly provides:

> [A]ll suits of a civil nature at common law or in equity to which any Federal Reserve bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits.

12 U.S.C. § 632. That provision expressly extends the district court's jurisdiction to state law causes of action. *Fed. Reserve Bank of Atlanta v. Thomas*, 220 F.3d 1235, 1244 (11th Cir. 2000). Creating federal jurisdiction by implication from an ambiguous reference in the charter is unwarranted where Congress has shown it can speak explicitly and directly.

on the question of subject matter jurisdiction is not simply whether Congress mentioned federal courts in the "sue or be sued clause," but whether the statutory text or legislative history indicate that Congress recognized that meaningful federal interests warranted the availability of a federal forum for state-law causes of action.

D. Conservation of federal judicial resources counsels caution in opening the doors to federal courts to cases based solely on state law.

This principle also serves very pragmatic concerns. As one commentator explained, "Federal dockets are overcrowded, and the last thing federal judges need is to be further saddled with cases grounded entirely on state law." Maloan, *supra*, at 760. *See also Luckett v. Harris Hosp.-Fort Worth*, 764 F. Supp. 436, 441 (N.D. Tex. 1991) (expressing concerns that broader federal jurisdiction for congressionally chartered corporations would open a "floodgate" of state law cases); *Collins v. Am. Red Cross*, 724 F. Supp. 353, 358 (E.D. Pa. 1989) (similar).

The influx of such cases diverts federal judicial resources needed for federal law issues to preside over actions based purely on state law in which district courts possess no particular expertise. As Judge Friendly warned, the federal judicial branch must guard against "diversion of judge-power urgently needed for tasks which only federal courts can handle or which, because of their expertise, they can handle significantly better than the courts of a state." Henry J. Friendly, *Federal Jurisdiction: A General View* 141 (1973). As one district judge has stated:

> This court is not convinced, however, that federal district courts should automatically hear all cases in which federal law is remotely, if at all, involved. . . . Such a rule would convert the federal district court from a court of limited jurisdiction, carefully defined by Congress, to a court of general jurisdiction hearing many cases in which state law would predominate.

Latch, 312 F. Supp. at 1076.

Perhaps more important for the interests of justice is the obvious fact that federal courts are not experts in state law. As aptly stated by Judge Friendly, "All such cases [in which state law is unclear] are pregnant with the possibility of injustice." Friendly, *supra*, at 143.

II. The Lower Court's Inference of Subject Matter Jurisdiction in a Civil Action Involving a Congressionally Chartered Corporation Based Entirely on Congress' Ambiguous Reference to Federal Courts Erodes the Vitally Important Role of State Courts in Our Federalist System.

In *Gregory v. Ashcroft*, 501 U.S. 452 (1991), Justice O'Connor's majority opinion featured a compelling essay on the on the importance of preserving the states' role:

> This federalist structure of joint sovereigns preserves to the people numerous advantages. It assures a decentralized government that will be more sensitive to the diverse needs of a

> heterogeneous society; it increases opportunity for citizen involvement in democratic processes; it allows for more innovation and experimentation in government; and it makes government more responsive by putting the States in competition for a mobile citizenry.

Id. at 458. She added that the "'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties,'" *Id.* (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)). Thus, "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Id. See United States v. Lopez*, 514 U.S. 549, 552 (1995) (citing *Gregory* as setting forth the "first principles" of federalism).

State courts play an essential role in this plan. The Founders gave to the states "the one transcendent advantage [of] the ordinary administration of criminal and civil justice." *Federalist No.* 17 (Dec. 5, 1787) (Alexander Hamilton). A state court is "the immediate and visible guardian of life and property." *Id.* Indeed, state courts have served the "historic role as the primary defenders of civil liberties and equal rights." J. Skelly Wright, *In Praise of State Courts: Confessions of a Federal Judge*, 11 Hastings Const. L. Q. 165, 188 (1984).

The decision below, however, has the effect of ousting state courts from their responsibility to administer justice in causes of action based entirely on state law, with no showing that meaningful federal interests warrant such an intrusion. The Chief Judge

of the Third Circuit has pointed out that federal court adjudication of state law claims results in "unavoidable intrusion of the federal courts in the lawgiving function of state courts." Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 Va. L. Rev. 1671, 1675 (1992). She stated convincingly,

> When federal judges make state law—and we do, . . . judges who are not selected under the state's system and who are not answerable to its constituency are undertaking an inherent state court function.

Id. at 1687. *See also* 13 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3502 (Rev. ed. 1971) ("[E]xpansion of the jurisdiction of the federal courts diminishes the power of the states.").

Former Colorado Supreme Court Justice Rebecca Love Kourlis wisely observed: "For most Americans, Lady Justice lives in the halls of state courts," *quoted in* Jennifer Walker Elrod, *Don't Mess with Texas Judges: In Praise of the State Judiciary*, 37 Harv. J.L. & Pub. Pol'y 629, 635 (2014).

One reason state courts are more reflective of and responsive to the concerns of ordinary citizens is their broader reliance on the jury, which John Adams called "the heart and lungs of liberty." Jennifer Walker Elrod, *Is the Jury Still Out?: A Case for the Continued Viability of the American Jury*, 44 Tex. Tech L. Rev. 303, 308 (2012). "[S]tate courts conduct[]about 46,200 civil jury trials per year. . . . By contrast, the federal courts conduct [only] about 2,100

civil jury trials per year." Elrod, *Don't Mess with Texas Judges*, *supra*, at 638.

State courts are fully capable of protecting the rights of their citizens. Indeed, one of the most significant advances in the past half century in the securing of individual protections has been the rejuvenation of state constitutional rights that are different from or broader than those guaranteed by the Constitution of the United States, a development that many state supreme court justices have celebrated. *See, e.g.*, Shirley S. Abrahamson, *Reincarnation of State Courts*, 36 Sw. L.J. 951 (1982); Judith S. Kaye, *Dual Constitutionalism in Practice and Principle*, 61 St. John's L. Rev. 399 (1987); Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights*, 9 U. Balt. L. Rev. 379 (1980); Stanley Mosk, *State Constitutionalism: Both Liberal and Conservative*, 63 Tex. L. Rev. 1081 (1985); Sandra Day O'Connor, *Trends in the Relationship Between the Federal and State Courts from the Perspective of a State Court Judge*, 22 Wm. & Mary L. Rev. 801 (1981); Stewart G. Pollock, *Adequate and Independent State Grounds as a Means of Balancing the Relationship Between State and Federal Courts*, 63 Tex. L. Rev. 977 (1985); Randall T. Shepard, *The Maturing Nature of State Constitution Jurisprudence*, 30 Val. U. L. Rev. 421 (1996); Robert F. Utter, *The Practice of Principled Decision-making in State Constitutionalism: Washington's Experience*, 65 Temp. L. Rev. 1153 (1992).

Additionally, a celebrated value of federalism is the ability of states to serve as "laboratories" in social policy. *See Lopez*, 514 U.S. at 581 (Kennedy, J., concurring) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)). To

the extent that courts are deprived of opportunities to develop state-law protections of personal rights and property rights, this aim of federalism is thwarted.

III. This Court Should Extend Its "Clear Statement" Doctrine to the Purported Creation of Federal Subject Matter Jurisdiction in Cases Otherwise Governed by State Law.

This Court has already crafted a tool that protects the role and responsibility of state courts in the federal system. The clear statement rule provides that "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Scanlon*, 473 U.S. at 242).

The Court gave substantive content to the Tenth Amendment protection of the states in *Nat'l League of Cities v. Usery*, 426 U.S. 833 (1976), holding that certain essential functions of a state are so "integral" to statehood that they may not be supplanted by federal law. "This Court has never doubted that there are limits upon the power of Congress to override state sovereignty, even when exercising its otherwise plenary powers to tax or to regulate commerce." *Id.* at 842.[4]

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[4] This Court suggested in *Murdock v. Memphis*, 87 U.S. (20 Wall.) 590, 633 (1874), that, even if the commerce clause allowed it, "Congress may not have the power to authorize the Supreme Court to supplant state courts as the authoritative declarers of law within their jurisdictions by functioning as a court of last resort with respect to state common law and statutory law." Ernest A. Young, *State Sovereign Immunity and the Future of*

The Court overruled *National League of Cities* a decade later in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). The *Garcia* Court did not dismantle federalism. Rather the majority concluded that the states can fully protect their interests through their representation in Congress. *Garcia* reasoned that the states "are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Id.* at 552.

The necessary corollary to that principle, Justice O'Connor subsequently pointed out, is that Congress must speak plainly when intruding on state authority:

> Application of the plain statement rule thus may avoid a potential constitutional problem. Indeed, inasmuch as this Court in *Garcia* has left primarily to the political process the protection of the States against intrusive exercises of Congress' Commerce Clause powers, we must be absolutely certain that Congress intended such an exercise.

Gregory, 501 U.S. at 464. This Court has long insisted that when Congress legislates "in a field which the States have traditionally occupied . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S.

Federalism, 1999 Sup. Ct. Rev. 1, 79 n.120 (1999) (quoting Laurence H. Tribe, *American Constitutional Law* § 5-20, at 380 (2d ed. 1988)).

218, 230 (1947). *See also Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Rice*, 331 U.S. 218); *United States v. Bass*, 404 U.S. 336, 349 (1971) ("[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.").

The clear statement rule provides fair notice to the states that legislation affecting their interests is before the Congress, affording them the opportunity to oppose or alter the intrusion into state sovereignty. It also ensures that congressional representatives consider the proposed legislation's impact on the states. By this means, the judicial branch avoids "unintended encroachment on the authority of the States." *CSX Transp. Inc. v. Easterwood*, 507 U.S. 658, 664 (1993); *see also New York v. United States*, 505 U.S. 144, 181 (1992) ("[A] healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."); *see generally* John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399 (2010).

Additionally, requiring that Congress spell out its intent to alter or enlarge federal jurisdiction invites Congress to tailor the scope of federal jurisdiction to closely conform to the federal interests at stake with far greater precision. For example, Congress has provided that all civil suits to which the Federal Deposit Insurance Corporation is a party shall be deemed to arise under the laws of the United States, except that certain actions "in which only the interpretation of the law of such State is necessary, shall not be deemed to arise under the laws of the United States." 12 U.S.C. § 1819(b)(2)(D)(iii). Similarly, 36 U.S.C. § 220505(b)(9) confers original

jurisdiction over any civil action against the U.S. Olympic Committee "solely relating to the corporation's responsibilities under this chapter." Such carefully tailored grants of subject matter jurisdiction should be encouraged by this Court.

To allow federal subject matter jurisdiction to supersede the ordinary responsibility of state courts to decide matters of state law based on an ambiguous statutory reference by Congress evades the very protections of states that *Garcia* relied upon. It deprives the states of the opportunity to contest intrusion by the federal government into a central facet of state sovereignty. At the same time, it allows Congress to use ambiguity "as a cloak for its failure to accommodate the competing interests [in] the federal-state balance." Tribe, *supra*, at § 5-8, p. 317. Congress has shown it can speak clearly when creating original jurisdiction over federally chartered corporations. This Court should require such a clear statement.

CONCLUSION

For the foregoing reasons, the judgment of the lower court should be reversed.

Date: August 23, 2016

Respectfully submitted,

Jeffrey R. White
Counsel of Record
AMERICAN ASSOCIATION
FOR JUSTICE
777 6th Street, N.W.
Suite 200
Washington, DC 20001
(202) 944-2839
jeffrey.white@justice.org
Attorney for Amicus Curiae

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In the Supreme Court of the United States

CRYSTAL MONIQUE LIGHTFOOT, ET AL.,

Petitioners,

v.

CENDANT MORTGAGE CORPORATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE AMERICAN RED CROSS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

LORI J. POLACHECK
American Red Cross
431 18th Street NW
Washington, DC 20006
(202) 303-4498

KENNETH S. GELLER
BRIAN D. NETTER
Counsel of Record
MATTHEW A. WARING
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
bnetter@mayerbrown.com

Counsel for Amicus Curiae
The American Red Cross

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BRIEF OF THE AMERICAN RED CROSS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

INTEREST OF THE *AMICUS CURIAE*

The American Red Cross ("Red Cross") is a humanitarian organization that prevents and alleviates human suffering in the face of emergencies.[1]

Founded in 1881, the Red Cross received a congressional charter in 1900; as amended, the charter specifies that the Red Cross is both a "Federally chartered instrumentality of the United States" and a charitable corporation that provides humanitarian services. See 36 U.S.C. § 300101(a).

The organization performs a number of vital functions:

Fulfilling U.S. Treaty Obligations. As a party to the Geneva Conventions, the United States is obligated to provide for the well-being of wounded and sick individuals in areas of conflict. The Conventions permit signatories to designate "National Red Cross Societies" to satisfy these obligations.[2] The Red Cross is the National Red Cross Society officially recognized by the United States, charged with "per-

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

[2] See, *e.g.*, (Geneva) Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 26, Aug. 12, 1949, 6 U.S.T. 3114, T.I.A.S. 3362, 75 U.N.T.S. 31.

form[ing] all the duties devolved on a national society" under the Conventions. 36 U.S.C. § 300102(2).

Service to the Military. In partnership with the federal government, the Red Cross provides services to members of the Armed Forces of the United States and to their families. The Red Cross provides financial assistance, facilitates emergency communications, supports veterans, and teaches coping skills to military families. In fiscal year 2015, the organization provided more than 367,000 emergency assistance services to servicemembers and their families. Am. Red Cross, *2015 Annual Report*, at 16 (2016).[3]

Disaster Relief. The Red Cross responds to more than 65,000 disasters every year—or one every eight minutes—ranging from individual house fires to large-scale events. Working through its disaster relief personnel, more than 95% of whom are volunteers, the organization provides shelter, food and water, and other supplies and services to those displaced or otherwise affected by disasters. Am. Red Cross, *Disaster Relief*.[4] The Red Cross also works with the global Red Cross and Red Crescent network to prepare for and respond to disasters in the world's most vulnerable communities. See Am. Red Cross, *2015 Annual Report*, *supra*, at 6–9.

Blood Services. The Red Cross is the Nation's largest provider of blood services, accounting for approximately 40% of the country's blood supply. The organization collects and distributes more than 5

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[3] http://www.redcross.org/images/MEDIA_CustomProductCatalog/m57440149_Annual-Report-2015.pdf.

[4] http://www.redcross.org/about-us/our-work/disaster-relief.

million blood donations every year from more than 3 million donors. Am. Red Cross, *Lifesaving Blood*.[5]

Training and Certification. The Red Cross offers a variety of training courses in which individuals can acquire skills in first aid, CPR, automated external defibrillator use, lifeguarding, babysitting, and caregiving. It also works with employers and organizations to offer training for employees in first aid. Am. Red Cross, *Health and Safety Training & Education*.[6] These courses taught skills to more than 4 million people in fiscal year 2015 alone. Am. Red Cross, 2015 Annual Report, *supra*, at 12.

* * *

This brief is limited to the second question presented by the petition for certiorari, *i.e.*, whether this Court's decision in *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), should be overruled. Pet. for Cert. i. That decision interpreted specific language in the Red Cross's congressional charter. Thus, any suggestion that the decision be overturned is of paramount interest to the Red Cross.

The Red Cross takes no position on how this Court should interpret specific language in the charter of respondent Federal National Mortgage Administration ("Fannie Mae"). Fannie Mae's charter contains different language that was adopted in a different historical and legal context.

SUMMARY OF ARGUMENT

In *American National Red Cross* v. *S.G.*, 505 U.S. 247 (1992), this Court held that specific language

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[5] http://www.redcross.org/what-we-do/blood-donation.

[6] http://www.redcross.org/what-we-do/-education.

within the sue-and-be-sued provision of the congressional charter of the Red Cross conferred original federal jurisdiction over suits involving the organization. That decision was a matter of statutory interpretation.

In the event that this Court determines that the interpretation of Fannie Mae's sue-and-be-sued clause is dictated by this Court's decision in *Red Cross* v. *S.G.*—despite differences between the language in the corporations' charters and histories—petitioners have asked this Court to revisit its ruling in *Red Cross* v. *S.G.* The Court should decline petitioners' request to revisit that ruling. There is no warrant for reconsidering *Red Cross*, as stare decisis strongly counsels against disturbing settled law.

When this Court interprets a statute, the doctrine of stare decisis has special force. And when Congress has revisited the statute in question after this Court's interpretation and has left the relevant language in place, the considerations of stare decisis are particularly compelling.

Such is the case here. In 2007, Congress revised the Red Cross's charter. But it left the sue-and-be-sued provision intact and expressly found that none of the "rights and obligations" of the Red Cross were being changed. That amendment to the Red Cross's charter shows that Congress has acquiesced in the result in *Red Cross* v. *S.G.* A dispute about the interpretation of another corporation's charter does not justify a departure from this Court's strong rule against statutory reinterpretation.

Moreover, this Court's decision in *Red Cross* v. *S.G.* was correct. In *Red Cross* v. *S.G.*, this Court held that, when Congress drafted the sue-and-be-

sued clause in the charter of the Red Cross, it did so against the backdrop of precedents defining the particular language that Congress employed. Because this Court had interpreted that language before Congress inserted it into the Red Cross's charter, the only reasonable conclusion was that Congress intended the language to mean exactly what this Court had already found that language to mean.

The Red Cross has no stake in Fannie Mae's charter and does not opine on how Fannie Mae's charter should be interpreted. But it should be beyond dispute that the reasoning of *Red Cross* v. *S.G.* remains sound as applied to the charter of the Red Cross, which used a linguistic formulation with an established meaning as determined by this Court's previous opinions.

ARGUMENT

In a three-paragraph aside near the end of their lengthy brief, petitioners argue that, if *Red Cross* would control the interpretation of Fannie Mae's charter, then *Red Cross* v. *S.G.* should be overruled.

This Court need not reach petitioners' argument. If the Court accepts petitioners' arguments that *Red Cross* v. *S.G.* is distinguishable because Fannie Mae's charter contains different language with a different historical pedigree, then there will be no need to reassess the Red Cross's charter. The Red Cross has no interest in the interpretation of Fannie Mae's charter and takes no position on that question.

If, however, the Court determines that *Red Cross* v. *S.G.* governs, it should reject petitioners' invitation to revisit *Red Cross* v. *S.G.* Standard principles of statutory stare decisis counsel strongly against reopening settled questions of statutory interpretation,

such as this Court's 1992 interpretation of language added to the Red Cross's charter in 1947. The stare decisis considerations here are particularly compelling because Congress has acquiesced in this Court's decision, both by the passage of 24 years' time and by leaving the sue-and-be-sued provision intact when amending the Red Cross's charter. Moreover, the decision in *Red Cross* v. *S.G.* remains correct.

A. *Red Cross* v. *S.G.* Should Be Upheld As A Matter Of Statutory Stare Decisis.

Petitioners have asked this Court to reconsider its decision in *Red Cross* v. *S.G.* But the doctrine of stare decisis impels this Court to honor its precedent.

1. Stare decisis is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2036 (2014). This Court follows precedents because doing so "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991).

"[S]tare decisis carries enhanced force when a decision * * * interprets a statute." *Kimble* v. *Marvel Entm't, LLC*, 135 S. Ct. 2401, 2409 (2015). "A difference of opinion within the Court * * * does not keep the door open for another try at statutory construction" because "Congress remains free to alter what [this Court] ha[s] done." *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172–73 (1989). Thus, statutory stare decisis implicates "institutional concerns about the relationship of the Judiciary to Congress." *Neal* v. *United States*, 516 U.S. 284, 295 (1996).

What is more, Congress's acquiescence in this Court's interpretation of a statute "'enhance[s] even the usual precedential force'" accorded to matters of statutory interpretation. *Watson* v. *United States*, 552 U.S. 74, 82–83 (2007) (quoting *Shepard* v. *United States*, 544 U.S. 13, 23 (2005)). Congress can acquiesce in one of two ways—by leaving the interpreted provision "undisturbed" when it "specifically addresse[s]" or "reexamine[s]" the area of law (*Square D Co.* v. *Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 420 (1986)), or by the sheer passage of time (see *Watson*, 552 U.S. at 82 (relying on passage of 14 years)).

2. Applied here, the considerations of stare decisis are particularly forceful. In *Red Cross* v. *S.G.*, this Court interpreted a statute: the Red Cross's charter as amended in 1947. 505 U.S. at 265–66; see Act of May 8, 1947, § 3, ch. 50, 61 Stat. 80, 81 (codified as amended at 36 U.S.C. § 300105). Nearly a quarter of a century has passed since this Court's decision.

Moreover, Congress recently revisited the Red Cross's charter and left the relevant language intact. In 2007, Congress enacted the American National Red Cross Governance Modernization Act, making what it described as the first "[s]ubstantive changes to the Congressional Charter * * * since 1947." Pub. L. No. 110–26, § 2(a)(1), 121 Stat. 103, 103.

In revisiting the charter, Congress overhauled the governance structure of the Red Cross. But it did not amend the sue-and-be-sued provision. In statutory findings, Congress acknowledged that "[t]he United States Supreme Court held The American National Red Cross to be an instrumentality of the United States" and found that "it is in the national

interest that the Congressional Charter confirm that status and that any changes to the Congressional Charter do not affect the rights and obligations of The American National Red Cross to carry out its purposes." *Id.* § 2(a)(7), 121 Stat. at 104–05; see *Dep't of Empl.* v. *United States*, 385 U.S. 355 (1966).

This Court "assume[s] that Congress is aware of existing law when it passes legislation." *Miles* v. *Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Here, that assumption should carry great weight, as Congress specified its intent not to alter the "rights and obligations" of the Red Cross.

3. Finally, the narrow exceptions to statutory stare decisis are not applicable. When this Court does "reverse [its] statutory interpretations, [it] most often point[s] to subsequent legal developments * * * that have removed the basis for a decision." *Kimble*, 135 S. Ct. at 2410. Or sometimes the Court will revisit a precedent it has found to be unworkable. See, *e.g.*, *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 173 (1989).

There have been no "subsequent legal developments" affecting the Red Cross's sue-and-be-sued clause, other than Congress's implicit ratification of this Court's interpretation in 2007. And nothing about the decision in *Red Cross* v. *S.G.* is unworkable. As applied to the Red Cross, "[t]he decision is simplicity itself to apply" (*Kimble*, 135 S. Ct. at 2411), insofar as it establishes federal court jurisdiction over all cases involving the Red Cross.[7]

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[7] Citing *Alleyne* v. *United States*, 133 S. Ct. 2151 (2013), petitioners contend that the force of stare decisis is reduced because *Red Cross* v. *S.G.* does not "govern primary conduct." Pet. Br. 52 (quoting *Alleyne*, 133 S. Ct. at 2164 (Sotomayor, J., concur-

B. *Red Cross* v. *S.G.* Was Correctly Decided.

In any event, this Court's decision in *Red Cross* v. *S.G.* faithfully and correctly applied its precedents in interpreting the specific language of the sue-and-be-sued clause of the Red Cross charter.

As it explained at the time, this Court did not write on "a clean slate." *Red Cross* v. *S.G.*, 505 U.S. at 252. Rather, in a line of precedents tracing back to 1809, this Court has held that Congress intends to confer federal jurisdiction when it authorizes a federally chartered corporation to sue or be sued in the courts of the United States.

The first relevant decision interpreted the charter of the first Bank of the United States. In an opinion by Chief Justice Marshall, the Court held that the Bank's charter did *not* confer federal jurisdiction when it authorized the bank "'to sue' 'in courts of record, or any other place whatsoever.'" *Bank of the United States* v. *Devaux*, 9 U.S. (5 Cranch) 61, 71 (1809). The Court contrasted the language in the Bank's charter with that of a statute allowing for suits against the Bank's officers "in any court of record of the United States, or of [*sic*] either of them," and reasoned that the disparity between the two provisions "evince[d] the opinion of [C]ongress, that the right to sue does not imply a right to sue in the

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ring)). But the concurring opinion that they cite concerned the interpretation of the *Sixth Amendment*, not a statute. And as applied to the Red Cross, the question whether the language confers federal jurisdiction is not a trivial question of procedure; it implicates the jurisdiction of the federal courts. Moreover, in *Alleyne*, the Court relied on the fact that Sixth Amendment doctrine had changed markedly in light of *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000). No similar legal development exists here.

courts of the union, unless it be expressed" in some other statute. *Id.* at 86.

Fifteen years later, the Court interpreted the charter of the second Bank of the United States to create federal jurisdiction. See *Osborn* v. *Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824). The second Bank's charter permitted the Bank to sue and be sued in "all state courts having competent jurisdiction, and in any circuit court of the United States." The Court held that, by permitting the Bank to sue and be sued "in any circuit court of the United States," the grant of federal jurisdiction "could not be plainer." *Id.* at 817

Next, in *Bankers' Trust Co.* v. *Texas & Pacific Ry. Co.*, 241 U.S. 295 (1916), the Court held that a charter providing that the railroad could "'sue and be sued * * * in all courts of law and equity within the United States'" did not confer federal jurisdiction, given that this language did not specifically reference federal courts and therefore "ha[d] the same generality and natural import" as the language at issue in *Devaux. Bankers Trust*, 241 U.S. at 302–04.

Finally, in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942), the Court noted that the FDIC's charter created original federal jurisdiction in FDIC cases. The charter authorized the FDIC "to sue or be sued 'in any court of law or equity, State or Federal.'" *Id.* at 455, 467–68.

Congress amended the Red Cross's sue-and-be-sued clause in 1947, parroting the language found to confer jurisdiction in *D'Oench* by providing that the Red Cross could "sue and be sued in courts of law and equity, State or Federal." Act of May 8, 1947, § 3,

ch. 50, 61 Stat. 80, 81 (codified as amended at 36 U.S.C. § 300105).

In *Red Cross* v. *S.G.*, this Court found that the Red Cross's charter confers federal jurisdiction. The Court credited the lineage of sue-and-be-sued cases and emphasized that, by language materially identical to the provision that the Court had recently interpreted in *D'Oench*, Congress intended the same result as in *D'Oench*—to "confer federal jurisdiction." 505 U.S. at 257. That reasoning is beyond reasonable dispute.

In inviting this Court to overrule *Red Cross* v. *S.G.*, petitioners do not address *any* of the statutory history and do not provide any compelling rationale for a completely new interpretation of the Red Cross's charter. Pet. Br. 51–52. Petitioners plainly have provided no sound reason for altering the interpretation of the statute interpreted in *Red Cross* v. *S.G.*[8]

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[8] To the extent petitioners also invite this Court to overrule precedents that Congress has the Article III power to confer federal jurisdiction over federally chartered corporations (Pet. Br. 52–60), that question was settled long ago in *Osborn*, 22 U.S. (9 Wheat.) at 823, 825, and reaffirmed on multiple occasions since, see *Red Cross v. S.G.*, 505 U.S. at 264 (collecting cases). As this Court held in *Red Cross v. S.G.*, it would be inappropriate "to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely" (*ibid.*), especially given that Article III "arising under" jurisdiction is broader than 28 U.S.C. § 1331 (*Verlinden B.V.* v. *Cent. Bank of Nigeria*, 461 U.S. 480, 492, 497 (1983)), and a federally chartered corporation "has no powers and can incur no obligations except as authorized by federal law" (*Puerto Rico* v. *Russell & Co.*, 288 U.S. 476, 485 (1933)).

CONCLUSION

However this Court rules on the judgment, it should leave its interpretation of the Red Cross's sue-and-be-sued clause undisturbed.

Respectfully submitted.

LORI J. POLACHECK
American Red Cross
431 18th Street NW
Washington, DC 20006
(202) 303-4498

KENNETH S. GELLER
BRIAN D. NETTER
Counsel of Record
MATTHEW A. WARING
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
bnetter@mayerbrown.com

Counsel for Amicus Curiae *The American Red Cross*

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